paragraph (a) of this section the Legal Counsel's designee, the regional attorney, or the regional attorney's designee, shall acknowledge receipt of the request within the 20 day period and include a brief notation of the reason for the delay and an indication of the date on which it is expected that a determination as to disclosure will be forthcoming. If more than 10 working additional days are needed, the requester shall be notified and provided an opportunity to limit the scope of the request or to arrange for an alternate time frame for processing the request.

(c)(1) Requests for records may be eligible for expedited processing if the requester demonstrates a compelling need. For the purposes of this section, compelling need means:

(i) that the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) that the requester is a person primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged Federal government activity.

(2) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. A determination on the request for expedited processing will be made and the requester notified within 10 working days. The Legal Counsel or designee shall promptly respond to any appeal of the denial for expedited processing.

6. Section 1610.10 is amended by adding a new sentence between the first and second sentences in paragraph (a), revising the introductory text of paragraph (b), redesignating paragraph (c) as paragraph (d), and adding a new paragraph (c) to read as follows:

§ 1610.10 Responses: form and content.

(a) * * * Records shall be made available in the form or format indicated by the requester, if the record is readily reproducible in that form or format. * * *

(b) A reply denying a written request for a record shall be in writing, signed by the Legal Counsel's designee, the regional attorney, or the regional attorney's designee, and shall include:

* * * * *

(c) When denying a request for records, the estimated volume of denied material shall be indicated, unless providing such estimate would harm an interest protected by the exemptions in 5 U.S.C. 522(b). When providing a reasonably segregable portion of a record, the amount of information deleted from the released portion, and to the extent technically feasible, the place in the record where such deletion was made shall be indicated.

7. Section 1610.11 is amended by revising the first and last sentences of paragraph (a), the last sentence of paragraph (b), paragraph (c) and the first sentence of paragraph (f) to read as follows:

§ 1610.11 Appeals to the Legal Counsel from initial denials.

(a) When the Legal Counsel's designee, the regional attorney, or the regional attorney's designee, has denied a request for records in whole or in part, the person making the request may appeal within 30 calendar days of its receipt. * * * Any appeal of a denial in whole or part by a regional attorney, or the regional attorney's designee, must include a copy of the regional attorney's, or the regional attorney's designee's determination.

(b) * * * The Legal Counsel or designee may extend the 20 day period in which to render a decision on an appeal for that period of time which could have been claimed and consumed by the Legal Counsel's designee, the regional attorney, or the regional attorney's designee, under § 1610.9 but which was either not claimed or consumed in making the original determination.

(c) The decision on appeal shall be in writing and signed by the Legal Counsel or designee. A denial in whole or in part of a request on appeal shall set forth the exemption relied on, a brief explanation of how the exemption applied to the records withheld and the reasons for asserting it, if different from that described by the Legal Counsel's designee, the regional attorney, or the regional attorney's designee under § 1610.10, and that the person making the request may, if dissatisfied with the decision on appeal, file a civil action in the district in which the person resides or has his principal place of business, in the district where the records reside, or in the District of Columbia.

* * * * *

(f) In the event that the Commission terminates its proceedings on a charge after the regional attorney or the regional attorney's designee denies a request for the charge file but during consideration of the requester's appeal from that denial, the request may be remanded for redetermination. * * *

§ 1610.14 [Amended]

8. Section 1610.14 is amended by adding ''or designees'' after ''and regional attorneys'' in the first sentence of paragraph (a).

§ 1610.15 [Amended]

9. Section 1610.15(f) is amended by replacing the word ''requrie'' with ''require.''

§ 1610.18 [Amended]

10. Section 1610.18(a) is amended by replacing the word ''perviously'' with ''previously.''

11. Section 1610.21 is revised to read as follows:

§ 1610.21 Annual report.

The Legal Counsel shall, on or before February 1, 1998, and annually thereafter, submit a Freedom of Information Act report covering the preceding fiscal year to the Attorney General of the United States. The report shall include those matters required by 5 U.S.C. 552(e), and shall be made available electronically.

§ 1610.34 [Amended]

12. Section 1610.34(a) is amended by replacing the word ''Council'' with ''Counsel.''

Dated: December 22, 1997.

Gilbert F. Casellas,

Chairman.

[FR Doc. 98–498 Filed 1–8–98; 8:45 am]

BILLING CODE 6570–06–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 924

[SPATS No. MS–012–FOR]

Mississippi Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with exceptions and additional requirements, a proposed amendment to the Mississippi regulatory program (hereinafter referred to as the ''Mississippi program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Mississippi proposed revisions to the Mississippi Surface Coal Mining and Reclamation Law (MSCMRL) pertaining to definitions, reorganization, adoption of rules and regulations, small operator assistance program, permit applications, permit fees, reclamation plans, performance bonds, permit issuance,

permit reissuance, permit revision, public participation, public hearings, formal hearings, confidentiality claims, environmental protection performance standards, postmining land use, underground coal mining, mine entrance signs, violations, civil penalties, bond release, bond forfeiture, suspension and revocation of permits, designating lands unsuitable for surface coal mining, and creation of a ''Surface Coal Mining and Reclamation Fund.'' The amendment is intended to revise the Mississippi program to be consistent with SMCRA, clarify ambiguities, and improve operational efficiency by incorporating the administrative practices and laws used by other environmental agencies in the State.

EFFECTIVE DATE: January 9, 1998.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209, Telephone: (205) 290–7282.

SUPPLEMENTARY INFORMATION:

I. Background on the Mississippi Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Mississippi Program

On September 4, 1980, the Secretary of the Interior conditionally approved the Mississippi program. Background information on the Mississippi program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the September 4, 1980, **Federal Register** (45 FR 58520). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 924.10, 924.15, 924.16, and 924.17.

II. Submission of the Proposed Amendment

By letter dated May 6, 1997 (Administrative Record No. MS–0338), Mississippi submitted a proposed amendment to its program pursuant to SMCRA. Mississippi submitted the proposed amendment in response to the required program amendment codified at 30 CFR 924.16 and at its own initiative. On March 10, 1997, the Governor of Mississippi signed Senate Bill No. 2725, which contains both substantive and nonsubstantive changes to the Mississippi Surface Coal Mining and Reclamation Law.

OSM announced receipt of the proposed amendment in the July 30, 1997, **Federal Register** (62 FR 40773), and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on August 29, 1997. Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified concerns relating to section 53–9–26, small operator assistance program; sections 53–9–37, 53–9–39, and 53–9–77 concerning public participation, public hearings, and formal hearings; section 53–9–45, environmental protection performance standards; and sections 53–9–55 and 53–9–69 concerning enforcement actions and civil penalties. OSM notified Mississippi of these concerns by letters dated October 23, 1997, and November 7, 1997 (Administrative Record Nos. MS–0343 and MS–0344, respectively).

By letter dated November 20, 1997 (Administrative Record No. MS–0346), Mississippi responded to OSM's concerns by submitting additional explanatory information. Because the additional information merely clarified certain provisions of Mississippi's proposed amendment, OSM did not reopen the public comment period.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

A. Nonsubstantive Changes Proposed for the Mississippi Surface Coal Mining and Reclamation Law

1. Nonsubstantive Revisions to Existing Statutes

Mississippi proposed revisions to the following previously-approved statutes that are nonsubstantive in nature and consist of minor wording and stylistic changes, minor revisions to reflect new designations of responsibility, and revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment (corresponding Federal statutes are listed in parentheses): section 53–9–3, legislative findings and declarations (section 101 of SMCRA); section 53–9–5, purpose (section 102 of SMCRA); section 53–9–19, financial interests of persons employed under this chapter (section 517g of SMCRA); section 53–9–21, surface coal mining and reclamation permit (section 506(a) through (c) of SMCRA) section 53–9–41, coal exploration permits (section 512 of SMCRA); section 53–9–47, surface effects of underground coal mining operations (section 516 of SMCRA); section 53–9–49, authorized departures from performance standards (section 711 of SMCRA); section 53–9–51, inspection and monitoring (section 517(b), (c), (e), and (f) of SMCRA); section 53–9–61, criminal penalties—resisting, preventing, impeding, or interfering with performance of duties (section 704 of SMCRA); section 53–9–63, nonexclusivity of penalty provisions (section 518(i) of SMCRA); section 53–9–73, cooperation with the Secretary of the Interior (section 523(c) of SMCRA); section 53–9–75, application of chapter to public corporations (section 524 of SMCRA); section 53–9–83, lease of state coal deposits (section 714(a), (c), (d), (e), and (g) of SMCRA); section 53–9–85, enforcement and protection of water rights (section 717 of SMCRA); and section 53–9–87, training, examination, and certification of persons responsible for blasting (section 719 of SMCRA).

Because Mississippi's proposed revisions to these previously-approved statutes are nonsubstantive in nature, the Director finds that the proposed revisions do not render the Mississippi program less stringent than SMCRA.

2. Deletion of Existing Statutes

Mississippi repealed section 53–9–13, creation of Surface Mining and Reclamation Operations Section; section 53–9–15, creation of Surface Mining Review Board; and section 53–9–17, Director of Bureau of Geology and Energy Resources. These sections designated to powers and duties of the agencies who would administer and enforce the Mississippi program. Mississippi replaced these sections with section 53–9–9, which designates the responsibilities of the new or renamed agencies who will administer and enforce the Mississippi program. Mississippi repealed section 53–9–59, criminal penalties—failure to make or making of false statement, representation or certification.

The substantive provisions of this section were added to section 53–9–57, Criminal penalties—violation of condition of permit or order. Mississippi repealed section 53–9–79, judicial review of decision. The substantive provisions of this section were added to section 53–9–77, right to formal hearing and appeal. Mississippi repealed section 53–9–91, fees. The substantive provisions of this section were added to new section 53–9–28, fees.

Because Mississippi added the substantive provisions of these previously-approved statutes to other sections of its program, the Director finds that the proposed deletions do not render the Mississippi program less stringent than SMCRA.

B. Revisions to the Mississippi Surface Coal Mining and Reclamation Law That Are Substantively Identical to the Corresponding Provisions of the Federal Statutes or Regulations

The proposed State statutes listed in the table contain language that is the same as or similar to the corresponding section of the Federal statutes or regulations. Differences between the proposed State statutes and the Federal statutes or regulations are nonsubstantive.

Topic	MSCMRL	Federal counterpart
Definition of approximate original contour	53–9–7(b)	701(2) of SMCRA
Definition of coal	53–9–7(d)	3 CFR 700.5
Definition of lignite	53–9–7(m)	701(30) of SMCRA
Definition of unwarranted failure to comply	53–9–7(aa)	701(29) of SMCRA
Compliance schedule	53–9–25(3)	510(c) of SMCRA
Transfer, assignment or sale of permit rights	53–9–33(4)	511(b) of SMCRA
Review of permits	53–9–33(5)	511(c) of SMCRA

Because the State statutes listed above are identical in meaning to the corresponding Federal statutes or regulations, the Director finds that Mississippi's proposed revisions are no less stringent than SMCRA and no less effective than the Federal regulations.

C. Other Revisions to the Mississippi Surface Coal Mining and Reclamation Law

Revisions to the following sections which are not specifically discussed below concern nonsubstantive wording changes or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. Section 53–9–7, Definitions

a. Mississippi proposes to delete the previously approved definitions for ''act,'' ''administrator,'' ''bureau,'' ''chief,'' ''director,'' ''division,'' ''Public Law 95–87,'' ''review board,'' and ''section'' at section 53–9–7(a), (b), (d), (e), (i), (j), (r), (t), and (u), respectively.

The term ''act,'' which was defined at section 53–9–7(a) as the Mississippi Surface Coal Mining and Reclamation Law, is not referenced in any of Mississippi's statutes, so the definition is not necessary to the meaning of the statutes. Therefore, the Director finds that the proposed deletion will not render the Mississippi program less stringent than SMCRA.

The term ''Pub. L. 95–87,'' which was defined at section 53–3–7(r) as the Surface Mining Control and Reclamation Act of 1977, was replaced by the term ''Federal act'' at new section 53–9–7(i), with no substantive change in the definition language. The Director finds that the proposed deletion is not inconsistent with any requirements of SMCRA or the Federal regulations.

The definitions of the terms ''administrator,'' ''bureau,'' ''chief,'' ''director,'' ''division,'' ''review board,'' and ''section,'' which identified those designated to administer and enforce and Mississippi program, were deleted because Mississippi redesignated the responsibilities for regulation of surface coal mining and reclamation operations in the State to reflect new or renamed agencies, and the terms are no longer applicable. The proposed deletions are consistent with the repeal of sections 53–9–13, 53–9–15, and 53–9–17 discussed above in finding A.2. Therefore, the Director finds that the removal of these definitions will not render the Mississippi program less stringent than SMCRA.

b. Mississippi proposed to add a definition for the term *appeal* at new section 53–9–7(a) to mean ''an appeal to an appropriate court of the state taken from a final decision of the permit board or commission made after a formal hearing before that body.'' Neither the Federal regulations nor SMCRA define the term ''appeal.'' However, the definition is not inconsistent with section 526(e) of SMCRA, which requires actions of a State regulatory authority pursuant to an approved State program be subject to judicial review by a court of competent jurisdiction in accordance with State law. Therefore, the Director finds that the State's definition is consistent with the generally accepted meaning of this term in the context of administrative law and is approving it.

c. At section 53–9–7(c), Mississippi defined the terminology ''as recorded in the minutes of the permit board'' to mean ''the date of the permit board meeting at which the action concerned is taken by the permit board.'' The permit board records all of its initial and final decisions or actions concerning permit applications, permit suspension or revocation, performance bond release, and the performance bond forfeiture in the minutes of the meetings held to consider them. Within specified times of these recordings, the applicants and interested parties may file written requests for formal hearings of the initial decisions before the permit board or appeal the final decisions before the chancery court. Although there is no Federal counterpart definition, the Director finds that the proposed definition is not inconsistent with the administrative review requirements of SMCRA.

d. Mississippi revised or added definitions for the following terms to reflect both changes in agency names and the reorganization of the State regulatory authority. At 53–9–7(e), the term ''commission'' was revised to mean ''the Mississippi Commission on Environmental Quality''; at section 53–9–7(f), the term ''department'' was revised to mean ''the Mississippi Department of Environmental Quality''; at section 53–9–7(g), the term ''executive director'' was defined as ''the executive director of the department''; at section 53–9–7(q), the term ''permit board'' was defined as ''the permit board created under Section 49–17–28'' (Environmental Quality Permit Board); and at section 53–9–7(x), the term ''state geologist'' was defined as ''the head of the office of geology and energy resources of the department or a successor office.'' Since the proposed definitions clarify terms used throughout Mississippi's statutes and are not inconsistent with any terms used in SMCRA, the Director is approving them.

e. At section 53–9–7(i), Mississippi defined the term ''Federal Act'' as ''the Surface Mining Control and Reclamation Act of 1977, as amended, which is codified as Section 1201 et seq. of Title 30 of the United States Code.'' The Director finds that Mississippi's proposed definition is consistent with the Federal definition of the term ''Act'' at 30 CFR 700.5, and is approving it.

f. At section 53–9–7(j), the term *formal hearing* was defined to mean ''a hearing on the record, as recorded and transcribed by a court reporter, before the commission or permit board where all parties to the hearing are allowed to present witnesses, cross-examine witnesses and present evidence for inclusion into the record, as appropriate under rules promulgated by the commission or permit board.'' There is no direct counterpart Federal definition. However, the Director finds that the proposed definition is not inconsistent with the Federal definition. However, the Director finds that the proposed definition is not inconsistent with the Federal requirements for administrative review at section 525 of SMCRA and 30 CFR Part 775 of the Federal regulations.

g. A definition for the term *interested party* was added at section 53–9–7(l) to mean ''any person claiming an interest relating to the surface coal mining operation and who is so situated that the person may be affected by that operation, or in the matter of regulations promulgated by the commission, any person who is so situated that the person may be affected by the action.'' There is no definition for the term ''interested party'' in SMCRA. However, the proposed definition is not inconsistent with the use of the terminology ''any person having an interest which is or may be adversely affected'' found in section 513(b) of SMCRA. Therefore, the Director is approving it.

h. Mississippi proposed to remove the reference to partnership or corporation from its definition of ''operator'' at section 53–9–7(n). The revised definition defines operator as any person engaged in coal mining who removes or intends to remove more than two hundred fifty (250) tons of coal from the earth by coal mining within twelve (12) consecutive calendar months in any one (1) location.'' Although the Federal definition of ''operator'' at section 701(13) contains the removed language, Mississippi's definition for ''person'' at section 53–9–7(r) includes partnerships and corporations. Therefore, the Director finds that Mississippi's definition of ''operator'' in conjunction with its definition of ''person'' is no less stringent than the Federal definition of ''operator.''

i. At section 53–9–7(p), the term ''permit area'' was revised by adding the requirement that the permit area be covered by the operator's performance bond. The Federal definition at section 701(17) also requires the permit area to be covered by the operator's bond. Therefore, the Director finds that Mississippi's revised definition is no less stringent than the Federal definition.

j. At section 53–9–7(r), the term *person* was revised by adding a joint venture, cooperative, and any agency, unit or instrumentality of federal, state or local government, including any publicly owned utility or publicly owned corporation to those who are considered a person. It is now defined as ''an individual, partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization and any agency, unit or instrumentality of federal, state or local government, including any publicly owned utility of publicly owned corporation.'' The Director finds that the revised definition at section 53–9–7(r) is substantively the same as the Federal definition of ''person'' at 30 CFR 700.5 and is no less stringent than sections 701(19) and 524 of SMCRA.

k. The terms *public hearing, informal hearing,* or *public meeting* were defined at section 53–9–7(t) to mean ''a public forum organized by the commission, department or permit board for the purpose of providing information to the public regarding a surface coal mining and reclamation operation or regulations proposed by the commission and at which members of the public are allowed to make comments or ask questions or both of the commission, department or the permit board.'' Section 53–9–37(2)(b) of the Mississippi Surface Coal Mining and Reclamation Law allows any interested party to request a public hearing and requires the permit board to hold a public hearing before issuance of a permit, whether or not one has been requested. Any member of the public, not just interested parties, may attend and participate in the hearings or meeting. There is no Federal counterpart definition. Although SMCRA does not provide for the type of open public process which allows participation by all members of the public, section 513(b) of SMCRA and 30 CFR 773.13 of the Federal regulations provide for an informal conference if requested by any person having an interest which is or may be adversely affected or the officer or head of any Federal, State, or local government agency or authority. The conference shall be conducted by a representative of the regulatory authority, who may accept oral or written statements and any other relevant information from any party to the conference. Therefore, the Director finds that Mississippi's proposed definition is no less stringent than the informal conference provisions of section 513 of SMCRA and no less effective than the public participation requirements of 30 CFR 773.13, and is approving the definition for these terms.

l. At section 53–9–7(v), the term *revision* was defined to mean ''any change to the permit or reclamation plan that does not significantly change the effect of the mining operation on either those persons impacted by the permitted operations or on the environment, including, but not limited to, incidental boundary changes to the permit area or a departure from or change within the permit area, incidental changes in the mining method or incidental changes in the reclamation plan.'' There is no Federal counterpart definition. However, the Director finds that the proposed definition is not inconsistent with the requirements of section 511 of SMCRA or 30 CFR 774.13 of the Federal regulations in relation to insignificant permit revisions and incidental boundary changes.

2. Section 53–9–9, General Responsibilities of the Department of Environmental Quality, the Commission on Environmental Quality, and the Environmental Quality Permit Board

This revised statute replaces previously approved sections 53–9–9, 53–9–13, 53–9–15, and 53–9–17. It designates the agencies which will administer and enforce the Mississippi program. The Department of Environmental Quality is designated as the agency to administer the Mississippi program. The Commission on Environmental Quality is designated as the body to enforce the Mississippi program, including the issuance of penalty orders, promulgation of regulations, and designation of lands unsuitable for surface coal mining. The Environmental Quality Permit Board is designated as the body to issue, modify, revoke, transfer, suspend, and reissue permits and to require, modify or release performance bonds. The Director, in accordance with section 503(a)(3), requires a State to provide authority to establish its regulatory authority and set forth its duties and responsibilities as in section 201 of SMCRA. The Director finds that section 53–9–9 meets this requirement, and is approving it.

3. Section 53–9–11, Promulgation of Rules and Regulations by Commission on Environmental Quality

Section 53–9–11(1) was revised to clarify the Commission on Environmental Quality's authority and responsibilities for rules and regulations. The Commission may

adopt, modify, repeal, and promulgate rules and regulations after notice and hearing and in accordance with the Mississippi Administrative Procedures Law. The Commission may also enforce rules and regulations and make exceptions to and grant exemptions and variances from them where not otherwise prohibited by Federal or State law. No exceptions, exemptions or variances shall be less stringent than rules and regulations promulgated under SMCRA. Section 53–9–11(1)(a)(iv) was revised to reflect changes in and add to the list of State agencies that are to receive notice of the public hearing that is required before the adoption of any rules and regulations. Section 53–9–11(1)(b) was revised by requiring the publication of the notice of the public hearing once a week for three consecutive weeks in one newspaper having general circulation in the state. Section 53–9–11(2) was revised by adding a provision specifying that failure of any person to submit comments within the time period established by the Commission would not preclude action by the Commission.

Although there is no direct Federal counterpart to the revised statute, the Director finds that section 53–9–11, as revised, is not inconsistent with section 503(a)(7) of SMCRA or the Federal regulations at 30 CFR 732.15(b)(10). Section 503(a)(7) requires States to promulgate rules and regulations consistent with the Federal regulations issued pursuant to SMCRA. The Federal regulation at 30 CFR 732.15(b)(10) requires States to provide for public participation in the development, revision, and enforcement of State regulations and the State program consistent with public participation requirements of SMCRA and 30 CFR chapter VII. Therefore, the Director is approving the above revisions.

4. Section 53–9–23, Permit Reissuance

Mississippi added a new provision at section 53–9–23(3) that allows an operator, if the application was timely filed, to continue surface coal mining operations until the permit board takes action on his reissuance application. Mississippi requires renewal applications to be filed at least 180 days before the expiration of the permit.

The Federal requirements for renewal of permits at section 506(d)(1) of SMCRA and 30 CFR 774.15(a) provide that a valid permit shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. Neither SMCRA nor the Federal regulations provide guidance on whether or not an operator may continue surface coal mining operations until action is taken on a renewal application that has been filed in a timely manner. However, the Director finds that the proposed provision is not unreasonable. If the operator files an application at least 180 days before his permit expires, Mississippi should have no problems completing its approval process, pursuant to its counterparts to section 506(d)(1) and 30 CFR 774.15(c), prior to expiration of the permit. Therefore, the Director finds that the proposed provision at section 53–9–23 will not render the Mississippi program less stringent than SMCRA or less effective than the Federal regulations.

5. Section 53–9–25, Contents of Permit Applications

Previously approved section 53–9–25(1), concerning permit fees, was moved to new section 53–9–28, and it is discussed below under finding C.8. Section 53–9–25(2) was designated as section 53–9–25(1)(a) and revised to require permit applications to contain information pertaining to the organization and business of the applicant including information regarding the ownership and names and addresses of directors, partners, officers, and resident agents; the previous experience and performance history of the applicant in surface coal mining; and a statement of whether the applicant, subsidiary, affiliate or persons controlled by or under common control with the applicant has held a mining permit which in the five-year period before the initial filing of the application had been suspended or revoked or under which the performance bond or deposit has been forfeited. It was also revised to require that permit applications contain any other information the permit board or commission by regulation may require consistent with the Federal Act. Existing section 53–9–25(3) (a) and (b) were designated as section 53–9–25 (1)(b) and (1)(c), respectively, with nonsubstantive language changes to clarify the existing provisions. Previously approved section 53–9–25(4), concerning Mississippi's small operator assistance program, was moved to section 53–9–26, and it is discussed below in finding C. 6.a. Previously approved section 53–9–25(5) was designated as section 53–9–25(2)(a) with nonsubstantive language changes to clarify the existing provisions. Existing section 53–9–25(6) was designated as section 53–9–25(2)(b) and revised to require that the insurance policy include compensation to persons damaged as a result of surface coal mining and reclamation operations, including use of explosives, and entitled to compensation under applicable State law. Previously approved section 53–9–25(7) was designated as section 53–9–25(2)(c) with nonsubstantive language changes to clarify the existing provisions. The Director finds that the revisions to section 53–9–25 are not inconsistent with and are no less stringent than the Federal requirements concerning contents of permit applications at section 507 of SMCRA.

6. Section 53–9–26, Small Operator Assistance Program (SOAP)

a. Mississippi proposes to revise its currently approved provision for a small operator assistance program codified at section 53–9–25(4) and to add the revised provision at section 53–9–26. This new section requires that if the permit board finds that the probable total annual production at all locations of a surface coal mining operation will not exceed 300,000 tons, the department is to assume the cost of conducting activities to obtain and provide the information required to be contained in the permit application as determined by the commission. The commission's determination is to be consistent with section 507(c) of SMCRA. This assumption of cost is subject to the availability of Federal or other special funds for that purpose and upon the written request of the operator. All work under this section is to be performed by a qualified public or private laboratory or other public or private qualified entity designated by the department.

With the exception of a typographical error, the Director finds that Mississippi's proposed provision at section 53–9–26 is no less stringent than section 507(c) of SMCRA. Section 507(c)(1) of SMCRA requires that if the regulatory authority finds that the probable total annual production at all locations of a coal surface mining operator will not exceed 300,000 tons, the cost of specified activities shall be assumed by the regulatory authority. Mississippi's use of the word ''operation'' in the phrase ''at all locations of a surface cost mining operation'' instead of ''operator'' changes the meaning of the provision at section 53–9–26 because an operator could have several permitted operations throughout the United States from which annual production must be considered. Therefore, the Director is approving the revision with the requirement that Mississippi correct this typographical error.

b. Section 507(h) of SMCRA and the implementing Federal regulation at 30 CFR 795.12(a)(2) require a coal operator that has received assistance under a small operator assistance program to

reimburse the regulatory authority for the cost of the services rendered if the program administrator finds that the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit. There is no statutory counterpart to section 507(h) of SMCRA in the Mississippi Surface Coal Mining and Reclamation Law. The Mississippi program does contain a regulation at section 195.18(a) of the Mississippi Surface Coal Mining Regulations concerning reimbursement of costs, but it is not consistent with section 507(h) of SMCRA or 30 CFR 795.12(a)(2) of the Federal regulations since it requires reimbursement for the cost of laboratory services if the commission finds that the applicant's actual and attributed annual production of coal exceeds 100,000 tons. However, in accordance with the existing required program amendment at 30 CFR 924.16(a), Mississippi is in the process of revising its regulations to meet the requirements of SMCRA and the Federal regulations prior to allowing coal exploration or surface mining operations in the State. Therefore, the Director will ensure that Mississippi amends its regulation at section 195.18(a) to require reimbursement for the cost of services if the applicant's actual and attributed annual production of coal exceeds 300,000 tons, or otherwise amend its program to be no less stringent than the requirements of section 507(h) of SMCRA and no less effective than the requirements of 30 CFR 795.12(a)(2) of the Federal regulations prior to Mississippi's implementation of a small operator assistance program in the State.

7. Section 53–9–27, Filing of Application for Public Inspection

Mississippi proposed three revisions at section 53–9–27. (1) Mississippi is requiring an applicant to file a copy of the application for public inspection within ten days after filing the application with the permit board. (2) Mississippi is clarifying where applications are to be filed by requiring that a copy of the application be filed with the clerk of the chancery court of the county or judicial district where the mining is to occur and where real property contiguous to the surface coal mining and reclamation operation is located if that property is located in more than one county or judicial district. (3) Mississippi is clarifying the type of coal seam information that the applicant may omit from the copies of the application filed for public inspection by specifying that the applicant may omit information pertaining to the quality, depth or width of the coal seam or the location of the coal seam within the permit area if the information has been determined to be confidential by the commission under section 53–9–43.

Section 507(e) of SMCRA requires the applicant to file a copy of the application for public inspection with the recorder at the courthouse of the county or an appropriate public office approved by the regulatory authority where the mining is proposed to occur, except for that information pertaining to the coal seam. Although there is no counterpart to Mississippi's ten-day time frame requirement in SMCRA, the Director finds that having a time frame within which an application must be filed for public inspection is not inconsistent with the requirements of section 507(e) of SMCRA. Mississippi's other proposed revisions to section 53–9–27 are consistent with and no less stringent than the Federal requirements at section 507(e) of SMCRA. Therefore, the Director is approving the three revisions proposed for section 53–9–27.

8. Section 53–9–28, Permit Fees

Mississippi proposes to remove its currently approved provision for permit fees codified at section 53–9–25(1) and to add a revised provision at section 53–9–28. Subsection (1) of this new section requires the commission to assess and collect a permit fee for reviewing the permit application and administering and enforcing a surface coal mining and reclamation permit. It also allows the commission to set permit fees for the transfer, modification or reissuance of a surface coal mining and reclamation permit. Subsection (2) allows the commission to establish a permit fee for the issuance, reissuance, transfer or modification of a coal exploration permit and a reasonable fee for a copy of a transcript of a formal hearing. Subsection (3) requires the commission to set by order the amount of any permit fee assessed. Such a permit fee may be less than, but shall not exceed the actual or anticipated direct and indirect costs of reviewing the permit application and administering and enforcing the permit. The commission may establish procedures to allow the assessment and collection of the permit fee over the term of the permit.

The Director finds that section 53–9–28(1) and (3) are consistent with and no less stringent than section 507(a) of SMCRA. Section 507(a) requires surface coal mining and reclamation permit applications to be accompanied by a fee as determined by the regulatory authority. It allows the fee to be less than, but requires the fee not to exceed, the actual or anticipated cost of reviewing, administering, and enforcing a permit. It also authorizes the regulatory authority to develop procedures which would enable the cost of the fee to be paid over the term of the permit. Although SMCRA contains no counterpart to section 53–9–28(2) concerning permit fees for coal exploration permits and copies of formal hearing transcripts, the Director finds that Mississippi's proposed fee payment provision for coal exploration permits is not inconsistent with SMCRA's provisions for surface coal mining and reclamation permit application fees and finds that Mississippi's proposed fee payment provision for formal hearing transcripts is not inconsistent with the provisions of 43 CFR 4.23 of the Federal regulations concerning fees for hearing transcripts. Therefore, the Director is approving the proposed statutory provisions at section 53–9–28.

9. Section 53–9–29, Reclamation Plan

Existing section 53–9–29(1) was revised by reorganizing its substantive requirements into an introductory statement and new subsections (1) through (5). The introductory language indicates that the reclamation plan shall include in the degree of detail as the commission may require by regulation the requirements of subsections (1) through (6). Subsection (1) requires an identification of lands subject to surface coal mining operations over the estimated life of those operations. Subsection (2) requires information about the condition and variety of uses of the land at the time of the application and the proposed uses of the land after reclamation. Subsection (3) requires a description of how reclamation is to be achieved, including a schedule of and timetable for significant reclamation activities. Subsection (4) requires an estimate of reclamation costs. Subsection (5) requires information on the steps that will be taken to comply with Mississippi's air and water quality standards, health and safety standards, and performance standards applicable to reclamation. New subsection (6) requires any other information consistent with the Federal Act as the permit board or commission may require to demonstrate that the reclamation required by this chapter can be accomplished. Existing subsection (2), concerning confidentiality of specified information, was removed.

Although the proposed provisions at section 53–9–29 do not contain all of the detailed requirements of section 508

of SMCRA, Mississippi is authorized to require by regulation other information consistent with the Federal Act. Therefore, the Director finds that section 53–9–29, as revised, is no less stringent than section 508 of SMCRA. It is noted that sections 180.18 through 180.37 of Mississippi's regulations contain the more detailed reclamation plan requirements of section 508 of SMCRA. It is further noted that section 186.15(a)(2) and (3) of Mississippi's regulations contain the substantive requirements for confidentiality of information required by section 508(a)(12) and (b) of SMCRA. Based on the above discussion, the Director is approving the revisions to section 53–9–29.

10. Section 53–9–31, Performance Bond

Section 53–9–31(1) was revised by clarifying the requirement that the performance bond be filed before the issuance of a permit and by requiring that the amount of the bond be determined by the permit board after consultation with the state geologist. Section 53–9–31(2) was revised by adding ''letters of credit'' to the types of bond allowed in lieu of a surety bond. The banks which issue the alternative types of bond must be insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or a similar federal banking or savings and loan insurance organization. Section 53–9–31(3) was revised by adding the requirement that the permit board's acceptance of the bond of the applicant without separate surety shall be in accordance with any conditions established by the commission in regulations promulgated under this chapter. Section 53–9–31(5) was revised by changing the terminology ''bond or deposit'' and ''bond'' to ''financial assurance.'' Other nonsubstantive wording and stylistic changes and minor revisions to reflect new designations of responsibility were made throughout this section.

The Director finds that the proposed provisions of section 53–9–31 are consistent with and no less stringent than the Federal requirements for performance bonds at section 509 of SMCRA.

11. Section 53–9–32, Application Summary

This new section requires the state geologist to prepare a plain language summary of a proposed surface coal mining and reclamation operation upon receipt of a complete application. The summary shall be made available to the public at the department and at each location where the applicant is required to place a copy of the application for public inspection.

Although there is no Federal counterpart requirement, the Director finds that the proposed provision will enhance the public participation requirements of Mississippi's program and will not render Mississippi's program less stringent than SMCRA or less effective than the Federal regulations.

12. Section 53–9–33, Requisites for Approval of Application for Permit

Existing section 53–9–39(1) was revised and added at new section 53–9–33(1). This revised provision authorizes the permit board to issue, deny, or modify a permit based upon a complete application for permit or a complete application for modification or reissuance of a permit within the time required under section 53–9–37. The permit board shall notify the applicant in writing of its action within the time required under section 53–9–39. The applicant for a permit or modification of a permit shall have the burden of establishing that its complete application is in compliance with the requirements of Mississippi's program. The action of the permit board shall be effective upon the initial decision by the permit board as recorded in the minutes of the permit board. The Director finds that the proposed provisions of section 53–9–33(1) are consistent with and no less stringent than the permit approval or denial provisions of section 510(a) of SMCRA.

Existing section 53–9–33(1) was designated as section 53–9–33(2). Subsection (2)(e) was revised by providing that any determination made by the permit board under paragraph (e) shall not be construed as a adjudication of property rights. The Director finds that the proposed revision is consistent with and no less stringent than the requirements of section 510(b)(6) of SMCRA.

13. Section 53–9–35, Permit Revisions

Existing subsection (1)(a) was designated as subsection (2) without any substantive changes. Existing subsection (1)(b) was designated as subsection (2) and it was revised by adding the requirement that a decision by the executive director to grant or deny a revision of a permit shall be subject to formal hearing and appeal under section 49–17–29 of the Mississippi Code of 1972. Section 49–17–29 contains general administrative practices and procedures used for formal hearings in connection with permits issued, denied, modified or revoked and for all appeals from decisions of the permit board. The Director finds that the proposed revisions are not inconsistent with and are no less stringent than the permit decision hearing and appeal requirements of section 514(c) and (f) of SMCRA.

Existing subsection (1)(c) was designated as subsection (3), and it was revised by adding the statement that ''[a] revision shall not be considered a modification.'' As discussed in finding C.1.m, Mississippi defined the term ''revision'' to mean any change to the permit or reclamation plan that does not significantly change the effect of the mining operation. Mississippi considers modifications as any change to the permit or reclamation plant that significantly changes the effect of the mining operation. All modifications are subject to permit application information requirements and procedures, including notice and hearings. The Director finds that the addition of the proposed statement is consistent with Mississippi's definition for the term ''revision'' and is not inconsistent with the revision requirements of section 511 of SMCRA. Existing subsections (2) and (3), which pertain to transfer, assignment or sale of permit rights and permit review, were removed and the substantive provisions added at section 53–9–33(4) and (5), respectively. Since the substantive provisions of these subsections were added to other portions of Mississippi's program, the Director finds that the proposed deletions do not render section 53–9–35 less stringent than section 511 of SMCRA. Based on the above discussion, the Director is approving the revisions to section 53–9–35.

14. Section 53–9–37(1), Public Notice and Written Comments

Mississippi proposed the following substantive revisions to its provisions at section 53–9–37(1).

a. Mississippi changed the word ''revision'' to ''modification,'' and changed its agency reference from ''administrator'' to ''permit board'' throughout subsection (1). Changing the word ''revision'' to ''modification'' is consistent with Mississippi's use of the term ''revision'' for non-significant changes to the permit or reclamation plan and its use of the term ''modification'' for significant changes to the permit or reclamation plan. Changing the term ''administrator'' to ''permit board'' is consistent with Mississippi's new designations of responsibility. The Director finds that these proposed changes are not

inconsistent with any provisions of SMCRA, and he is approving them.

b. *Submission of a complete application.* Mississippi added the word ''complete'' before the word ''application.'' This provision now requires that upon submission of a complete application for a permit or modification of an existing permit, under this chapter and the regulations promulgated under this chapter, the applicant shall submit to the permit board a copy of the applicant's advertisement of the ownership, precise location and boundaries of the land to be affected. The Director finds that Mississippi's use of the word ''complete'' to clarify that it expects the applicant to submit an application that contains all of the application requirements of its program is no less stringent than section 513(a) of SMCRA which requires submission of an application for a surface coal mining and reclamation permit, or revision of an existing permit, pursuant to the provisions of this Act or an approved State program, and is approving this revision.

c. *Newspaper advertisement.* Mississippi revised this provision by requiring the applicant to place an advertisement of the ownership, precise location, and boundaries of the land to be affected in a local and regional newspaper of general circulation in the county in which the proposed mine is to be located. If no local newspaper of general circulation in the county is published, notice shall be published in a regional newspaper and in a newspaper of general statewide circulation published in Jackson, Mississippi. The Mississippi program currently requires publication in only one newspaper. The Director finds that Mississippi's proposed revision enhances the public participation requirements of its program and is no less stringent than the requirement for public notice at section 513(a) of SMCRA.

d. *Notification to local governmental bodies, planning agencies, sewage and water treatment authorities.* Mississippi changed the term ''immediately'' to ''as soon as possible'' in its requirement to transmit the comments to the applicant, and made other minor wording changes to clarify existing requirements. The revised provision reads as follows:

> The permit board shall notify local governmental bodies, planning agencies, sewage and water treatment authorities, or water companies in the county in which the proposed surface coal mining will take place of the submission of the complete permit application. The permit board shall notify them of the operator's intention to surface mine coal on a particularly described tract of land, the number of the permit application and where a copy and summary of the proposed surface coal mining and reclamation plan may be inspected. These local bodies, agencies, authorities or companies may submit written comments within a reasonable period established by the commission on the effect of the proposed operation on the environment which is within their areas of responsibility. The comments shall be transmitted as soon as possible to the applicant by the permit board and shall be made available to the public at the same locations as the surface coal mining and reclamation permit application.

Section 513(a) of SMCRA requires that comments received from local bodies, agencies, authorities or companies shall immediately be transmitted to the applicant and made available to the public. Although Mississippi changed the term ''immediately'' to ''as soon as possible'' in its counterpart notification provision at section 53–9–37(1), its currently approved implementing regulation at section 186.12(c) does require that comments be immediately transmitted for filing and public inspection at the public office where the applicant filed a copy of the application and to the applicant. Therefore, since Mississippi interprets the phrase ''as soon as possible'' to mean ''immediately'' in its implementing regulations, the Director finds that this provision of section 53–9–37(1) in conjunction with section 186.12(c) is no less stringent than the counterpart Federal requirements at section 513(a) of SMCRA, and is approving the revision.

e. *Submittal of comments.* Mississippi added the following preclusion provision at section 53–9–37(1): ''The failure of any person to submit comments within the time established by the commission shall not preclude action by the commission.'' Although there is no direct Federal counterpart, the Director finds that this provision is not inconsistent with the provision in section 513(a) of SMCRA that allows the regulatory authority to establish a reasonable period of time for local bodies, agencies, authorities or companies to submit written comments with respect to the effect of the proposed operation on the environment or with the provision in section 513(b) of SMCRA that allows the filing of written objections within 30 days after the last publication of the newspaper notice, and is approving the proposed provision.

15. Section 53–9–37(2), Written Objections and Public Hearing

Mississippi proposed the following substantive revisions to the provisions at section 53–9–37(2).

a. *Written objections.* At section 53–9–37(2)(a), Mississippi changed the term ''immediately'' to ''as soon as possible'' in its requirement that written objections concerning a permit application be transmitted to the applicant and be made available to the public. Section 513(b) of SMCRA requires that objections shall immediately be transmitted to the applicant and made available to the public. Although Mississippi changed the term ''immediately'' to ''as soon as possible'' in its counterpart provision at section 53–9–37(2), its currently approved implementing regulation at section 186.13(b) does require that written objections be transmitted immediately upon receipt to the applicant and a copy filed for public inspection at the public office where the applicant filed a copy of the application. Therefore, since Mississippi interprets the term ''as soon as possible'' to mean ''immediately'' in its implementing regulations, the Director finds that this provision of section 53–9–37(2) in conjunction with section 186.13(b) is no less stringent than the counterpart Federal requirements at section 513(b) of SMCRA, and is approving the revision.

b. *Public hearing.* At section 53–9–37(2)(b), Mississippi added time frames for requesting a public hearing, publication of the notice of a public hearing, and holding a public hearing. Mississippi added a provision that requires the permit board to hold a public hearing before issuance of a permit. Mississippi also changed the term ''informal conference'' to ''public hearing'' and added a requirement concerning transcript costs. The revised provision reads as follows:

> Within 45 days after the last publication of the notice described in subsection (1) of this section, any interested party may request that the permit board conduct a public hearing concerning the complete application. If a public hearing is requested, the permit board shall hold a public hearing in the county of the proposed surface coal mining and reclamation operations within ninety (90) days after receipt of the first request for a public hearing. Before issuance of a permit, the permit board shall hold a public hearing at a suitable location in the county of the proposed surface coal mining and reclamation operation. The date, time and location of any public hearing shall be advertised by the permit board in the same manner as provided for the publication of notice for advertisement of land ownership under subsection (1) of this section. The last

public hearing notice shall be published at least thirty (30) days before the scheduled public hearing date. An electronic or stenographic record shall be made of the public hearing proceeding. Any person requesting transcription of the record shall bear the costs of the transcription. That record shall be maintained and shall be accessible to the public until final release of the applicant's performance bond or other collateral. If all persons requesting the public hearing stipulate agreement before the requested public hearing and withdraw their request, the public hearing may be canceled at the discretion of the permit board.

Mississippi uses its public hearing provisions as a counterpart to the informal conference provisions of section 513(b) of SMCRA. As discussed in Finding C.1.1, Mississippi's public hearing is more of an open public process than the informal conference allowed by SMCRA since Mississippi allows any member of the public, not just interested parties, to attend and participate in the hearing. Mississippi's proposed language which requires the permit board to hold a public hearing before issuance of a permit is in accordance with the Mississippi law regarding administrative practices and procedures at section 49–17–29(4)(a) of the Mississippi Code of 1972. This law requires the permit board to conduct a public hearing or meeting to obtain comments from the public on a proposed permit prior to its issuance even if a public hearing is not requested. Section 513(b) of SMCRA provides for written objections and requests for an informal conference to be filed within 30 days after the last publication of the newspaper notice required by section 513(a) of SMCRA, the informal conference is to be held within a reasonable time of the receipt of the request, and the date, time and location of the informal conference shall be advertised by the regulatory authority at least two weeks prior to the scheduled conference. The Director finds that allowing interested parties 45 days to request a public hearing enhances Mississippi's public participation provisions and holding a public hearing within 90 days after receipt of the first request is reasonable considering the 45-day comment period and the revised notice of hearing provisions. The Director finds that Mississippi's requirement that the notice of hearing be published at least once a week for four consecutive weeks and that the last notice be published at least 30 days before the scheduled hearing date is no less stringent than the Federal requirement that a notice be published at least two weeks prior to a scheduled conference. The Director finds that requiring a person to bear the cost of a requested transcript is consistent with and no less effective than the Federal requirements for a transcript of hearings at 43 CFR 4.23. Based upon the above discussion, the Director is approving the proposed revisions at section 53–9–37(2)(b).

16. Section 53–9–37(3), Access to the Proposed Mining Area

Mississippi revised its existing provision regarding access to the proposed mining area and added the revised provision at subsection (3). The revised provision requires the permit board to arrange with the applicant reasonable access to the area of the proposed operation for the purpose of gathering information relevant to the proceeding before the public hearing upon request by any interested party requesting a public hearing. An exception clause was added to the provision that allows access to be provided before the public hearing if requested in less than one week of the hearing. Section 513(b) of SMCRA allows the regulatory authority the discretion of determining whether to conduct visits to areas of proposed mines for the purpose of gathering information relevant to the proceeding. Since SMCRA does not specifically require the regulatory authority to arrange access, the Director finds that section 53–9–37(3), including the exception clause, is no less stringent than section 513(b) of SMCRA.

17. Section 53–9–37(4), Permit Decision

Mississippi revised its existing provisions at section 53–9–39(2) and (3) concerning the time frames for making permit decisions, and moved them to section 53–9–37(4). Section 53–9–37(4) requires the permit board to act upon a complete permit application within 60 days after the date of the public hearing. If no public hearing is requested or required, the permit board shall act within 60 days after the last publication of the applicant's newspaper notice described in subsection (1). An exception clause was added that provides that the time frames may be extended if agreed in writing by the department and the applicant.

The Director finds that requiring a decision on a permit application within 60 days after an administrative proceeding is consistent with and no less stringent than the requirements of section 514(a) of SMCRA and requiring a decision on a permit application within 60 days after publication of the last public notice if no public hearing is requested or required is no less stringent than the requirements of section 514(b) of SMCRA. The Director also finds that the proposed time-frame extension language is not inconsistent with the requirements of section 514(b) of SMCRA, which allows the regulatory authority to notify the applicant for a permit of its decision within a time frame established by the regulatory authority if no informal conference is held.

On October 23, 1997, OSM notified Mississippi of a concern regarding Mississippi's time-frame extension provision as it relates to its public hearing provision (Administrative Record No. MS–0343). The time-frame extension provision did not appear to take into consideration the agreement of interested parties who requested the public hearing. In its letter dated November 20, 1997 (Administrative Record No. MS–0346), Mississippi explained that the reason it anticipates the possible need for an extension to the time frame is because a public hearing is mandatory prior to the issuance of a permit and its public hearing process allows any member of the public to attend and participate, not just interested parties who request a hearing. Because anyone can participate in public hearings, similar hearings in other Mississippi pollution control programs have resulted in voluminous public comment which required more than 60 days for the permit board and the department to digest, review, and incorporate into the permit as appropriate.

The Director agrees that if voluminous public comments are received at a public hearing, it may take more than 60 days to make a final decision on whether to grant or deny the permit. However, the Director finds that the proposed time-frame extension language is not consistent with the requirements of section 514(a) of SMCRA since it does not provide for agreement to the extension by interested parties who requested the public hearing. Section 514(a) of SMCRA requires that persons who are parties to administrative proceedings also be furnished with the written findings of the regulatory authority, and section 53–9–39(1)(d) of the Mississippi Surface Coal Mining and Reclamation Law requires that persons who requested the public hearing be notified of the permit decision. Therefore, interested parties who requested the public hearing, not only the applicant, must agree to an extension of the permit decision time frame. As discussed in finding C.1.h, Mississippi defines the term ''interested party'' to mean any person claiming an interest relating to the surface coal mining operation and who is so situated that the person may be affected by that

operation. If a mandatory hearing is held because no interested party requested a public hearing, then agreement by the applicant only would not be inconsistent with section 514(a) of SMCRA.

Based upon the above discussion, the Director is approving the revisions to section 53–9–37(4) with the requirement that Mississippi propose revisions to section 186.23(b)(2) of the Mississippi Surface Coal Mining Regulations, or otherwise amend its program, to require agreement to an extension of the 60-day time frame for acting upon a complete permit application by the applicant and interested parties who requested the public hearing, if a public hearing is requested and held.

18. Section 53–9–39, Notification of Permit Decision, Formal Hearings, and Appeals

Mississippi proposed several revisions regarding notification of the action taken by the permit board on a permit application, administrative review of the action, and appeal of the final action. The Director finds that with the exception of the provisions discussed below, the revised provisions at section 53–9–39 are substantively the same as the Federal counterpart provisions of SMCRA.

a. *Section 53–9–39(1), notification.* Mississippi's provisions at section 53–9–39(1) require that within 14 days after issuing or denying a permit or granting or denying a motification to an existing permit, the permit board shall notify by mail the applicant, the mayor of each municipality and the president of the board of supervisors of each county in which the permit area is located, persons who submitted written comments if those persons provided a complete address, and persons who requested the public hearing if those persons provided a complete address. The notification to the local governmental officials shall include a description of the permit area and a summary of the mining and reclamation plan.

(1) Section 510(a) of SMCRA requires that within 10 days after the granting of a permit, the regulatory authority shall notify the local governmental officials in the local political subdivision in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land. Although Mississippi's revised provisions at section 53–9–39(1)(b) requires notification to local governmental officials within 14 days instead of 10 days after issuing or denying a permit, the Director finds that the proposed revision is no less stringent than section 510(a) of SMCRA because Mississippi allows local governmental officials 45 days to request a formal hearing at section 53–9–39(3), instead of the 30 days provided by section 514(c) of SMCRA.

(2) Section 514(a) of SMCRA requires that if an informal conference has been held, the regulatory authority shall issue and furnish the applicant for a permit and persons who are parties to the administrative proceedings with the written finding of the regulatory authority within 60 days of said hearings. Mississippi's revised provisions at section 53–9–37(4) require the permit board to act upon a complete permit application within 60 days after the date of the public hearing and section 53–9–39(1)(a) and (d) require notification to the applicant and persons who requested the public hearing within 14 days after issuing a decision on a permit or modification to an existing permit. Although Mississippi's revised provisions allow the permit board to furnish its permit decision within 74 days of a hearing instead of 60 days, the Director finds that Mississippi's revised time-frame for notification at section 53–9–39(1) (a) and (d) is no less stringent than the requirements of section 514(a) of SMCRA because Mississippi allows additional time to the applicant and interested persons to request a formal hearing. Mississippi's statute at section 53–9–39(3) allows the applicant or any other interested party to request a formal hearing within 45 days after its initial decision to issue or deny a permit, while section 514(c) of SMCRA allows the applicant or any person with an interest which is or may be adversely affected to request a hearing within 30 days after the applicant is notified of the final decision.

Based upon the above discussions, the Director is approving Mississippi's proposed revisions at section 53–9–39(1) of the Mississippi Surface Coal Mining and Reclamation Law.

b. *Section 53–9–39(3), formal hearings.* At section 53–9–39(3), Mississippi allows the applicant and any other interested party to request a formal hearing within 45 days after the permit board makes its decision to issue or deny a permit application and requires hearings to be conducted within sixty (60) days after receipt of the first request for a formal hearing. Mississippi removed its previously approved provision from section 53–9–39(7) that allowed judicial appeal if the regulatory authority failed to act within the time limits specified in its statutes and added a new provision at section 53–9–39(3) that allows any interested party to request a formal hearing if the permit board fails to take action within the time allowed under section 53–9–37, which specified the time periods for holding a public hearing and for issuing or denying a permit. Mississippi is also requiring that at the conclusion of the formal hearing or within 30 days after the formal hearing, the permit board shall enter in its minutes a final decision affirming, modifying or reversing its prior decision to issue or deny the permit. The permit board shall mail within seven days after its final decision a notice of that decision to the applicant and all persons who participated as a party in the formal hearing.

(1) Section 514(c) of SMCRA allows the applicant or any person with an interest which is or may be adversely affected to request a hearing within 30 days after the applicant is notified of the final decision and requires that administrative hearings on final permit decisions be held within 30 days of a request for hearing. The Director finds that allowing the applicant and interested persons 45 days to request a formal hearing will not render Mississippi's administrative review process less stringent than the Federal requirements. However, in its October 23, 1997, letter, OSM expressed concern that Mississippi's requirement for a 60-day rather than a 30-day time frame for holding a hearing may not be consistent with the Federal requirements. In its letter dated November 20, 1997, Mississippi explained that the 60-day period stemmed from the permit board's procedures for holding a formal hearing. The formal hearing procedures require that direct testimony be submitted in writing, usually in affidavit form, with attached exhibits, prior to the hearing. All parties are given 30 days to submit initial testimony, and then are given 7 days to submit rebuttal testimony. The hearing normally is scheduled for 7 days after the filing of rebuttal testimony. At the hearing, cross-examination is allowed. This allows members of the public and community or environmental groups to participate in formal hearings, because the individuals or groups are given time to put their complaints and concerns in writing, rather than having to depend on the presentation of evidence through oral testimony. Taking into consideration the additional time that Mississippi allows the applicant and other interested persons to request a hearing and the formal hearing process explained above, the Director finds that Mississippi's time frame for holding a formal hearing is no less stringent than

the counterpart Federal provision at section 514(c) of SMCRA.

(2) Section 514(f) of SMCRA requires that any applicant or any person with an interest which is or may be adversely affected who has participated in the administrative proceedings as an objector shall have the right to judicial appeal if the regulatory authority fails to act within the time limits specified in this Act. In its October 23, 1997, letter, OSM expressed concern that Mississippi had removed its counterpart provision from section 53–9–39(7). In its November 20, 1997, letter Mississippi explained that it had divided the right to review the permit board's failure to act within specified time periods into separate administrative and judicial forums by allowing affected parties to request a formal hearing under section 53–9–39(3). The party then may request judicial appeal at section 53–9–39(6) in accordance with the requirements of section 53–9–77(1) and section 49–17–29(5) of the Mississippi Code of 1972 if the party is aggrieved by the formal hearing decision. If the affected party wishes to seek direct judicial review of the failure of the permit board to abide by any time frame in the Mississippi statutes, the party may file suit pursuant to section 53–9–67(1)(b), which provides judicial review for the failure of the agency to perform any nondiscretionary duty under the Act. SMCRA does not provide for a formal hearing on a regulatory authority's failure to act within the time limits specified in SMCRA. However, the Director finds that Mississippi's provision at section 53–9–39(3) when combined with the judicial review requirements of sections 53–9–77(1) and 49–17–29(5) and the civil action requirements of 53–9–67(1)(b) is no less stringent that the Federal requirements at section 514(f) of SMCRA.

(3) In its letter dated October 23, 1997, OSM expressed its concern that Mississippi's proposed language at section 53–9–39(3) that allows the permit board a total of 30 days within which to issue a decision on a permit and an additional seven days within which to furnish its written decision to the proper parties after a formal hearing may be less stringent than the Federal requirements. Section 514(c) of SMCRA requires that the written decision be issued and furnished within 30 days after a formal hearing. In its letter dated November 20, 1997, Mississippi explained that the seven days in which the permit board would be allowed to mail the notice of the decision is a reasonable effort to accommodate the combined effect of Mississippi case law and the Mississippi Open Meetings Law on the method the permit board uses to make and record its permit actions. The permit board's decision documents must include an explanation of the specific reasons for an agency's decision, if the reasons are not otherwise evident from the administrative record (*McGowan* v. *State Oil & Gas Board*, 604 So. 2d 312 (1992)). Since a decision document cannot be prepared until the decision is made, it would be very difficult for the permit board to issue an order on the same day it is made. Permit actions are taken by a vote of the seven-member board and the decision is then entered into the meeting minutes. Under Mississippi law, the permit board can take action on a permit only at an open meeting, Mississippi Annotated Code section 25–41–5 (Rev. 1990), normally scheduled twice monthly. The Director finds that since the final permit decision is made at the conclusion of the formal hearing or within 30 days after the formal hearing at a meeting which is open to the public, including the applicant and all persons who participated as a party in the formal hearing, Mississippi's provision at section 53–9–39(3) which allows the permit board to mail its written decision within seven days after its final decision is recorded in the minutes of the permit board is no less stringent than the requirements of section 514(c) of SMCRA.

c. *Section 53–9–39(5), transcript of hearings.* Section 514(e) of SMCRA requires that a verbatim record of each hearing shall be made and a transcript made available on the motion of any party or by order of the regulatory authority. Mississippi's requirement for a transcript was removed from existing section 53–9–39(6) and was not added to the revised provision concerning the requirement for a verbatim record at section 53–9–39(5). However, Mississippi's currently approved regulations at section 187.11(b)(3)(ii), concerning administrative review of permit decisions, includes this requirement. Therefore, the Director finds that section 53–9–39(5) in conjunction with Mississippi's approved regulation at section 187.11(b)(3)(ii) of the Mississippi Surface Coal Mining Regulations is no less stringent than the Federal requirements for a verbatim record and transcript of a hearing at section 514(e) of SMCRA.

19. Section 53–9–43, Confidentiality of Information

This section was modified by removing the existing provisions regarding issued permits meeting all applicable performance standards and by adding the existing language from section 53–9–41(2) on the confidentiality of information. Mississippi also proposed additional requirements. Section 53–9–43 now authorizes the commission to determine confidentiality claims and to provide penalties for unauthorized disclosure of confidential information. Information submitted concerning trade secrets or privileged commercial or financial information relating to the competitive rights of an applicant and which is specifically identified as confidential shall not be available for public examination if the applicant submits a written confidentiality claim to the commission before the submission of the information and the commission determines the confidentiality claim is valid. The confidentiality claim shall include a generic description of the nature of the information included in the submission. The commission shall promulgate rules and regulations consistent with the Mississippi Public Records Act regarding access to confidential information. Any information for which a confidentiality claim is asserted shall not be disclosed pending the outcome of any formal hearing and all appeals. Any person knowingly and willfully making unauthorized disclosures of any information determined to be confidential shall be liable for civil damages. A person convicted of making unauthorized disclosures shall be fined $1,000 and dismissed from public office or employment.

Section 512(b) of SMCRA and 30 CFR 772.15(b) of the Federal regulations require that information concerning coal exploration that is submitted to the regulatory authority as confidential concerning trade secrets or privileged commercial or financial information which relates to the competitive rights shall not be available for public examination. The Federal regulation at 30 CFR 772.15(c) provides that information requested to be held as confidential shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information. The Director finds that the requirements of section 53–9–43 are non inconsistent with the requirements of SMCRA or the Federal regulations concerning confidentially of information, and is approving the proposed revisions to section 53–9–43.

20. Section 53–9–45, Performance Standards Relating to Surface Mining

This section was modified by adding the existing language from section 53–9–43 concerning content of permits for surface coal mining and reclamation operations at subsection (1). Mississippi revised the existing language by adding a requirement that any permit issued to conduct coal exploration operations, as well as surface coal mining and reclamation operations, require such operations to meet all applicable environmental protection performance standards of this chapter and such other requirements as the commission shall promulgate. This section was also amended to make various clarifying language revisions to the existing provisions concerning the general environmental protection performance standards that the commission shall promulgate by regulations, including the following: At section 53–9–45(2)(c), the regulations shall assure restoration of the approximate original contour of the land with all highwalls, spoil piles and depressions eliminated, unless an exception is provided under section 53–9–45. At section 53–9–45(2)(g), the operator may elect to impound water to provide lakes or ponds for wildlife, recreational or water supply purposes if it is a part of the approved mining and reclamation plan and if those impoundments are constructed in accordance with applicable Federal and state laws and regulations. At section 53–9–45(2)(h), the regulations shall govern the proper conduct of augering operations or prohibit those operations under certain circumstances. At section 53–9–45(4)(b)(i) and (ii), additional criteria were added for a variance from the requirement to restore to approximate original contour and to reclaim the land to an industrial, commercial, residential or public use. Notification must be made to appropriate Federal, state, and local governmental agencies providing an opportunity to comment on the proposed use; the proposed postmining land use must be compatible with adjacent land uses and state and local land use planning; and the proposed postmining land use must be economically practical.

Section 515 of SMCRA provides the general performance standards that are applicable to all surface coal mining operations. In its letter dated October 23, 1997, OSM expressed concern that Mississippi's reference at section 53–9–45(4)(b) to subsection (2) in the phrase ''a variance from other requirement to restore to approximate original contour set forth in subsections (2) or (3) of this section'' could be interpreted as an expansion of the variance to non-steep slope disturbed areas since subsection (2) contains the general protection performance standards that are applicable to all surface coal mining and reclamation operations. Section 515(e)(2) of SMCRA grants a variance from the requirement to restore disturbed areas to approximate original contour only for steepslope surface coal mining and reclamation operations. In its letter dated November 20, 1997, Mississippi explained that the discrepancy stems from a typographical error which is the result of renumbering the provisions. Therefore, the Director finds that with the exception of this typographical error, Mississippi's proposed revisions at section 53–9–45 are no less stringent than the provisions of section 515 of SMCRA, and is requiring Mississippi to remove its reference to subsection (2) from section 53–9–45(4)(b).

21. Section 53–9–53, Mine Entrance Signs

This section was revised by adding new information requirements for mine entrance signs. The signs must also state that questions and complaints regarding the operation may be directed to the department, and they must show the department's telephone number.

There is no direct Federal counterpart to Mississippi's proposed provision. However, the Director finds that requiring permittees to maintain additional information on their mine entrance signs is not inconsistent with section 517(d) of SMCRA or 30 CFR 816.11(c)(2) of the Federal regulations pertaining to requirements for mine entrance signs.

22. Section 53–9–55, Complaints, Formal Hearing, Service of Notices, and Civil Penalties

This section was amended to add new provisions and make various clarifying language revisions to the existing provisions concerning violations and assessment of civil penalties.

a. *Section 53–9–55(1), written complaint, formal hearing, and service of notices.* Existing section 53–9–55 was revised by adding new subsection (1), which allows service of a written complaint at paragraph (a), affords an opportunity for a formal hearing to alleged violators at paragraph (b), and provides for service of notices at paragraph (c). These new paragraphs read as follows:

(a) When the commission or an authorized representative of the department has reason to believe that a violation of this chapter or any regulation or order of the commission or permit board or any condition of a permit has occurred, the commission may cause a written complaint to be served upon the alleged violator. The complaint shall specify the section, regulation, order or permit alleged to be violated and the facts alleged to constitute the violation and shall require the alleged violator to appear before the commission at a time and place specified in the order to answer the complaint. The time of appearance before the commission shall be not less than twenty (20) days from the date of the mailing or service of the complaint, whichever is earlier.

(b) The commission shall afford an opportunity for a formal hearing to the alleged violator at the time and place specified in the complaint or at another time or place agreed to in writing by both the department and the alleged violator, and approved by the commission. On the basis of the evidence produced at the formal hearing, the commission shall enter an order which in its opinion will best further the purposes of this chapter and shall give written notice of that order to the alleged violator and to any other persons who participated as parties at the formal hearing or who made written request for notice of the order. The commission may assess penalties as provided in this section.

(c) Except as otherwise expressly provided, any notice or other instrument issued by or under authority of the commission may be served on any affected person personally or by publication, and proof of that service may be made in the same manner as in case of service of a summons in a civil action. The proof of service shall be filed in the office of the commission. Service may also be made by mailing a copy of the notice, order, or other instrument by certified mail, directed to the person affected at the person's last known post-office address as shown by the files or records of the commission. Proof of service may be made by the affidavit of the person who did the mailing and shall be filed in the office of the commission.

In its letter of October 23, 1997, OSM expressed a concern that Mississippi's provisions at section 53–9–55(1)(a) may conflict with the enforcement provisions of section 521(a) of SMCRA and Mississippi's counterpart enforcement provisions at section 53–9–69(1). Section 521(a) requires the Secretary or his authorized representative to issue orders of cessation and notices of violation when on the basis of an inspection it is determined that a violation exists. Section 53–9–55(1)(a) authorizes the commission to cause a written complaint to be served when the commission or an authorized representative of the department has reason to believe that a violation has occurred, without mention of an inspection. Section 53–9–55(1)(b) provides the alleged violator an opportunity for a formal hearing regarding the written complaint. In its letter of November 20, 1997, Mississippi

explained that section 53–9–55(1) grants optional enforcement authority to the commission that is in addition to the mandatory enforcement requirements in section 53–9–69(1), which requires the issuance of an appropriate cessation order or notice of violation upon discovering a violation during an inspection. Section 521(d) of SMCRA provides that section 521 of SMCRA shall not be construed so as to eliminate any additional enforcement rights or procedures which are available under State law to a State regulatory authority.

Based upon the above discussion, the Director finds that the proposed enforcement and hearing provisions at section 53–9–55(1) (a) and (b) as such as supplemental to Mississippi's enforcement and hearing provisions at section 53–9–69 and are not inconsistent with the provisions of section 521 of SMCRA. The Director further finds that Mississippi's proposed provision at paragraph (c) is not inconsistent with the Federal requirements for service of notices of violation, cessation orders, and show cause orders at 30 CFR 843.14 of the Federal regulations, which allows service on the person to whom the notice or order is directed or by certified mail. Therefore, the Director is approving section 53–9–55(1).

b. *Section 53–9–55(2), assessment of a civil penalty*. Existing section 53–9–55(1) was revised and redesignated as section 53–9–55(2). Existing section 53–9–55(2), concerning a civil penalty for failure to correct a violation for which a citation had been issued, was removed. Mississippi proposed minor clarifying language changes to the existing requirements and revised the amount of the civil penalty that may be assessed for each violation. Section 53–9–55(2) now authorizes the commission, after notice and opportunity for a formal hearing, to assess a civil penalty not to exceed $25,000 per violation, Mississippi's existing provision and section 518(a) of SMCRA authorize the assessment of $5,000 for each violation. However, in *In Re: Permanent Surface Mining Regulation Litigation*, U.S.D.C., District of Columbia, Civil Action No. 79–1144 (February 26, 1980), the Court ruled that penalty amounts need not be equivalent to those of the Federal regulations at 30 CFR Part 845. The Court determined that a State must consider the four criteria listed in section 518(a) of SMCRA for determining the amount of the penalty and the penalties imposed must be no less stringent than those in SMCRA. Mississippi's revised statutory language continues to consider the four criteria specified in section 518(a) in determining the amount of the penalty. Therefore, in accordance with section 518(i) of SMCRA, the Director finds that Mississippi's program provisions at section 53–9–55(2) incorporates civil penalties no less stringent than those set forth in section 518(a) of SMCRA and contains the same or similar procedural requirements relating to them.

c. *Section 53–9–55(3), payment of penalty*.

(1) Mississippi removed its existing statutory language at section 53–9–55(3) regarding a public hearing and added the substantive provisions from section 53–9–55(4) concerning payment of a penalty. The opportunity for a formal hearing regarding a civil penalty was added at section 53–9–55(2). Section 53–9–55(3) was revised by removing the language that specified the amount of interest that must be paid to a person cited with a violation on penalties placed in escrow if it is determined through administrative or judicial review of the proposed penalty that no violation occurred or that the amount of the penalty should be reduced. Section 518(c) of SMCRA provides that the person cited with a violation can receive 6 percent interest, or interest at the prevailing Department of the Treasury rate. Mississippi's revision provides for the return of the escrowed amount with ''any interest earned.'' However, Mississippi's regulation at section 245.20(c) of the Mississippi Surface Coal Mining Regulations requires refund with interest from the date of payment into escrow to the date of the refund at the rate of 6 percent or at the prevailing Department of the Treasury rate, whichever, is greater. Therefore, the Director finds that Mississippi's revision at section 53–9–55(3) in conjunction with its regulation at section 245.20(c) is no less stringent that section 518(c) of SMCRA.

(2) Section 53–9–55(3) was also revised by adding a new provision that allows the commission to promulgate regulations regarding a waiver from the requirement to post a penalty payment bond upon a showing by the operator of an inability to post the bond in order to contest the amount of the proposed penalty or fact of the violation.

In its November 7, 1997, letter to Mississippi, OSM expressed concern regarding this requirement because section 518(c) of SMCRA specifies that a person who wishes to contest either the amount of the penalty or the fact of violation shall prepay the proposed penalty to the Secretary, who shall then place it into an escrow account. The Federal regulations at 30 CFR 845.19(a) similarly provide that a person charged with a violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty to the Department of the Interior's Office of Hearings and Appeals. In its November 20, 1997, letter, Mississippi explained that a 1996 decision of the United States Supreme Court arising from *Mississippi, M.L.B. v. S.L.J.*, 117 S. Ct. 555 (1996) had cast doubt on a Mississippi agency's authority to require indigent parties to prepay a penalty or the cost of appeal as a prerequisite to conducting the appeal and prompted the department to add the provision regarding the possible waiver of the prepayment provision. The Director understands Mississippi's concern, but recognizes that one of the principal factors leading to the adoption of SMCRA's prepayment requirement was Congressional concern about the historically low collection rate of similar penalties assessed by other governmental agencies. Because of this concern, neither SMCRA nor the Federal regulations provide for a waiver of the prepayment requirement. Therefore, the Director finds that Mississippi's proposal at section 53–9–55(3) for a prepayment waiver is inconsistent with SMCRA and the Federal regulations, and is not approving it.

d. *Section 53–9–55(4), penalty for willfully and knowingly authorizing, ordering or carrying out a violation*. The existing statutory language at section 53–9–55(5) was moved to section 53–9–55(4) and revised to read as follows:

> When a permittee violates this chapter or any regulation or written order of the commission promulgated or issued under this chapter or any condition of a permit issued, any director, officer, general partner, joint venturer in or authorized agent of the permittee who willfully and knowingly authorized, ordered or carried out that violation shall be subject to separate civil penalties in the same amount as penalties that may be imposed upon a person under subsection (2) of this section.

The Director finds that the revised statutory requirements at section 53–9–55(4) are no less stringent than the requirements of section 518(f) of SMCRA relating to civil penalties for directors, officers, or agents of corporate permittees.

e. *Section 53–9–55(5), recovery of penalties in a civil action*. The substantive provisions of existing section 53–9–55(6) were moved to section 53–9–55(5) and revised to allow civil penalties to be recovered in a civil action in the chancery or circuit court of the First Judicial District of Hinds County or in the chancery or circuit court of any county in which the surface

coal mining and reclamation operation exists or in which the defendant may be found. The Director finds that section 53–9–55(5) is no less stringent than section 518(d), which allows civil penalties to be recovered in a civil action.

f. New section 53–9–55(6) specifies that ''provisions of this section and chapter regarding liability for the costs of clean-up, removal, remediation or abatement of any pollution, hazardous waste or solid waste shall be limited as provided in section 49–17–42 and rules promulgated under that section.'' Section 49–17–42 of the Mississippi Code of 1972 specifies that ''any lender or holder who maintains indicia of ownership primarily to protect an interest in a property, facility, or other person, and who does not participate in the management of the property, facility, or other persons, shall not be considered an owner or operator of that property, facility, or other person, nor liable under any pollution control or other environmental protection law, or any rule or regulation or written order of the commission in pursuance thereof, for the prevention, clean-up, removal, remediation or abatement of any pollution, hazardous waste or solid waste placed, released or dumped on, in, about or near property, facility or other person or caused by any operator on or of the property, facility or other person.''

Although there is no direct Federal counterpart to this provision, the Director finds that section 53–9–55(6) is not inconsistent with section 518(f) of SMCRA that limits liability for violations of corporate permittees to the permittee and the director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out such violation.

23. Section 53–9–57, Criminal Penalties

Mississippi revised this section by incorporating additional statutory language from existing section 53–9–59 concerning criminal penalties for making false statements, representations, and certifications. The revised provision reads as follows:

Any person who willfully and knowingly violates this chapter or any regulation or written order of the commission promulgated or issued under this chapter or any condition of a permit, or makes any false statement, representation or certification or knowingly fails to make any statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under a regulation or written order of the commission promulgated or issued under this chapter, shall, upon conviction, be punished by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than one (1) year, or both.

The Director finds that Mississippi's revised provision for criminal penalties is consistent with and no less stringent than the counterpart requirements in section 518(e) and (g) of SMCRA, and is approving the revisions to section 53–9–37.

24. Section 53–9–65, Bond Release and Bond Forfeiture

Section 53–9–65 was revised to authorize the permit board to release performance bonds, to clarify the existing public hearing provisions, to provide for administrative review and appeal of decisions of the permit board, and to establish a procedure for bond forfeiture.

a. *Section 53–9–65(1) and (2), application and schedule for bond release.* Previously approved subsection (1) provides for filing of an application for the release of performance bond, public notice of the application, and inspection and evaluation of the reclamation work involved. Previously approved subsection (2) provides the criteria and schedule for release of performance bond. Mississippi revised these sections by proposing minor wording and stylistic changes and revisions to reflect new designations of responsibility. The Director finds that the proposed revisions at section 53–9–65(1) and (2) will not render these previously approved statutory provisions less stringent than the Federal counterpart provisions at section 519(a) through (d) of SMCRA.

b. *Section 53–9–65(3), public hearing.* Mississippi added new provisions for a public hearing at subsection (3), removed its provision concerning an informal conference at existing subsection (4), and removed its provisions concerning the public hearing at existing subsection (5). The revised provisions at subsection (3) read as follows:

Any interested party or the responsible officer or head of any federal, state or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to the operations, may submit written comments on the proposed release from bond or other collateral, and request a public hearing concerning the bond release application under Section 49–17–29. The failure of any person to submit comments within the time required shall not preclude action by the permit board. Any request for a public hearing concerning the bond release application shall be made in writing within thirty (30) days after the last publication of the notice described in subsection (1) of this section. The permit board may on its own motion hold a public hearing concerning the bond release application. If requested, the permit board shall hold a public hearing to obtain comments from the public on the application for bond release. The date, time and location of the public hearings shall be advertised by the permit board in the same manner as provided for the publication of notice for advertisement of land ownership under Section 53–9–37. The last public hearing notice shall be published at least seven (7), but not more than fourteen (14) days before the scheduled public hearing date. If all persons requesting the public hearing stipulate agreement before the requested public hearing, the public hearing may be cancelled at the discretion of the permit board.

Mississippi's requirements concerning public hearings throughout its statutory provisions, including those for the release of performance bonds, are used as a counterpart to SMCRA's provisions for an informal conference at section 513(b). Section 519(g) of SMCRA allows the regulatory authority to establish an informal conference as provided in section 513(b) to resolve written objections concerning a performance bond release request. Mississippi's proposed statutory provisions at section 53–9–65(3) do not contain the substantive requirements of section 513(b) of SMCRA that the regulatory authority hold an informal conference within a reasonable time of the receipt of a request or for an electronic or stenographic record of the conference proceedings. However, Mississippi's regulation at section 207.11(e) that provides for an informal conference on proposed bond releases contains these substantive requirements. Section 207.11(e)(2) requires that the informal conference be held within 30 days from the date of the notice; section 207.11(e)(3) requires an electronic or stenographic record be made of the conference and the record maintained for access by the parties, until final release of the bond, unless recording is waived by all of the parties to the conference; and section 207.11(f)(3) provides that if an informal conference has been held, the notification of the decision shall be made to the permittee and all interested parties within 30 days after conclusion of the conference. Therefore, the Director finds that Mississippi's proposed revisions for a public hearing at subsection (3) in conjunction with its regulations at section 207.11(e) and (f) are no less stringent than the Federal provisions for an informal conference at sections 519(g) and 513(b) of SMCRA.

c. *Section 53–9–65(4), formal hearing and appeal.* Mississippi is adding the

following provision at new subsection (4) that provides for a formal hearing on the permit board's initial decision to grant or deny the bond release and judicial appeal of its final decision.

Within thirty (30) days after the permit board takes action on the bond release application as recorded in the minutes of the permit board, any person who filed a written comment or requested or participated in the public hearing under this subsection may request a formal hearing before the permit board regarding its initial decision to grant or deny the bond release. The formal hearing shall be conducted as provided by Section 49–17–29. Upon conclusion of the formal hearing, the permit board shall enter into its minutes its final decision affirming, modifying or reversing its prior action on the bond release application. Any appeal from that decision may be taken by any person who participated as a party in the formal hearing in the manner provided in Section 49–17–29.

The Director finds that the provision for a formal hearing at section 53–9–65(4) is no less stringent than section 519(d) of SMCRA, which provides for a public hearing if the application for release of the bond is disapproved, or section 519(f) and (g) of SMCRA, which provide for a public hearing on proposed bond releases. The Director also finds that the provision for appeal at section 53–9–65(4) is no less stringent than section 526(e) of SMCRA, which requires that actions of a State regulatory authority shall be subject to judicial review by a court of competent jurisdiction in accordance with State law.

d. *Section 53–9–65(5), bond forfeiture.* Mississippi added the following provisions concerning bond forfeiture to new subsection (5).

(a) If a surface coal mining and reclamation operation is not proceeding in accordance with this chapter or the permit, the operation represents an imminent threat to the public health, welfare and the environment, and the operator has failed, within thirty (30) days after written notice to the operator and opportunity for a formal hearing, to take appropriate corrective action, a forfeiture proceeding may be commenced against the operator for any performance bond or other collateral posted by the operator.

(b) A forfeiture proceeding against any performance bond or other collateral shall be commenced and conducted according to Sections 49–17–31 through 49–17–41.

(c) If the commission orders forfeiture of any performance bond or other collateral, the entire sum of the performance bond or other collateral shall be forfeited to the department. The funds from the forfeited performance bond or other collateral shall be used to pay for reclamation of the permit area and remediation of any offsite damages resulting from the operation. Any surplus performance bond or other collateral funds shall be refunded to the operator or corporate surety.

(d) Forfeiture proceedings shall be before the commission and an order of the commission under this subsection shall be a final order. If the commission determines that forfeiture of the performance bond or other collateral should be ordered, the department shall have the immediate right to all funds of any performance bond or other collateral, subject only to review and appeals allowed under Section 49–17–41.

(e) If the operator cannot be located for purposes of notice, the department shall send notice of the forfeiture proceeding, certified mail, return receipt requested, to the operator's last known address. The department shall also publish notice of the forfeiture proceeding in the same manner as provided for the publication of notice for the advertisement of land ownership under Section 53–9–37. Any formal hearing on the bond forfeiture shall be set at least thirty (30) days after the last notice publication.

(f) If the performance bond or other collateral is insufficient to cover the costs of reclamation of the permit area or remediation of any offsite damages, the commission may initiate a civil action to recover the deficiency amount in the county in which the surface coal mining operation is located.

(g) If the commission initiates a civil action under this section, the commission shall be entitled to any sums necessary to complete reclamation of the permit area and remediate any offsite damages resulting from that operation and attorney's fees.

SMCRA does not address bond forfeiture proceedings. However, the Director finds that Mississippi's proposed provisions for bond forfeiture proceedings are no less effective than the counterpart Federal regulations at 30 CFR 800.50.

25. Section 53–9–67, Civil Action

a. Mississippi revised previously approved subsections (1) through (5) by proposing minor wording and stylistic changes and revisions to reflect new designations of responsibility. The Director finds that the proposed revisions at section 53–9–67(1) through (5) will not render these previously approved statutory provisions less stringent than the Federal counterpart provisions at sections 520(a) through (e) of SMCRA.

b. Mississippi removed its existing provision at section 53–9–67(6), which provided that a person who is injured in his person or property through a violation by an operator may bring an action for damages, including reasonable attorney and expert witness fees, only in the judicial district in which the surface coal mining operation complained of is located. The removal of this limiting provision means that a person so injured may initiate a civil action in any judicial district. Therefore, the Director finds that the removal of this provision will not render Mississippi's provisions at section 53–9–67 less stringent than section 520 of SMCRA.

c. New section 53–9–67(6) specifies that ''provisions of this section and chapter regarding liability for the costs of clean-up, removal, remediation or abatement of any pollution, hazardous waste or solid waste shall be limited as provided in section 49–17–42 and rules promulgated under that section.'' Although there is no direct Federal counterpart to this provision, the Director finds, based on the discussion in finding C.22.f, that the proposed provision is not inconsistent with the requirements of section 518(f) of SMCRA that limit liability for violations of corporate permittees to the permittee and the director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out such violation.

26. Section 53–9–69, Inspection—Cessation Order—Suspension or Revocation of Permit—Hearing

a. Mississippi revised section 53–9–69(1) (a) and (b) by changing the authority for ordering inspection of a surface coal mining operation at which an alleged violation is occurring and for ordering a cessation of a surface coal mining and reclamation operation when a condition, practice or violation creates an imminent danger to the health and safety of the public, or is causing or can reasonably be expected to cause significant imminent environmental harm to land, air or water resources from the ''administrator'' to the ''executive director or state geologist as the executive director's designee.'' These revisions are consistent with Mississippi's redesignation of the responsibilities for administering and enforcing the Mississippi program, which is discussed in finding C.2. Therefore, the Director finds that the proposed revisions will not render section 53–9–69(1) (a) and (b) less stringent than section 521(a) (1) and (2) of SMCRA.

b. Mississippi revised section 53–9–69(1)(c), which concerns (1) issuance of an enforcement order for a violation that does not create an imminent danger to the health and safety of the public or cannot be reasonably expected to cause significant imminent environmental harm to land, air or water resources and ordering immediate cessation of the activities violating or resulting in the violation, and (2) issuance of an order of cessation for a violation that was not abated within the period of time originally fixed or subsequently extended.

Mississipi proposed to change the authority for issuing an order of

violation and an order of cessation for failure to abate the violation from the ''administrator'' to the ''commission, executive director or the executive director's authorized representative.'' The Director finds that this revision is consistent with Mississippi's redesignation of the responsibilities for administering and enforcing the Mississippi program, which is discussed in finding C.2.

Mississipi revised section 53–9–69(1)(c)(i) to allow, rather than require, the issuance of an order of violation. The Director finds that allowing issuance rather than requiring issuance of an order of violation for the specified type of violation is less stringent than the Federal requirements at section 521(a)(3) of SMCRA, which provides that a notice of violation shall be issued to the permittee if he is in violation, but such violation does not create an imminent danger to the health or safety of the public, or cannot be reasonably expected to cause significant, imminent environmental harm to land, air, or water resources. There is no Federal counterpart to Mississippi's proposed language which allows ordering cessation of the activities that are causing this type of violation.

However, the Director finds that the proposed provision will not render the Mississippi program less stringent than SMCRA since the ordering of cessation of the activities creating the violation is in addition to issuance of the order of violation. Based upon the above discussion, the Director is approving the proposed revisions with the requirement that Mississippi amend section 53–9–69(1)(c)(i) to require the issuance of a violation order for the specified type of violation by changing the word ''may'' to ''shall'' in the phrase ''the commission, executive director or the executive director's authorized representative may issue an order to the permittee or agent of the permittee.''

c. Mississippi revised section 53–9–69(1)(d), which concerns permit suspension or revocation, to read as follows:

When, on the basis of an inspection, the executive director has reason to believe that a pattern of violations of this chapter, any regulation promulgated under this chapter or any condition of a permit exists or has existed, and if the executive director also finds that the violations are caused by the unwarranted failure of the permittee to comply with this chapter, any regulation promulgated under this chapter or any condition of a permit, or that the violations are willfully caused by the permittee, the executive director shall issue an order to the permittee to show cause as to why the permit should not be suspended or revoked by the permit board. Upon the permittee's failure to show cause to the satisfaction of the executive director or the executive director's authorized representative as to why the permit should not be suspended or revoked, the executive director or the executive director's authorized representative shall present this information to the permit board and request that the permit board suspend or revoke the permit. The permit board shall decide the executive director's request under the procedures of Section 49–17–29(4) and (5). Any request by an interested party for a formal hearing regarding the permit board's initial decision on suspension or revocation of the permit or any appeal of the final decision following the formal hearing by any person who participated as a party in the formal hearing may be taken as provided under Section 49–17–29(4) and (5).

Mississippi's revisions include changing the authority from the ''administrator or his authorized representative'' to the ''executive director or the executive director's authorized representative'' and the ''permit board'' for enforcing the requirements of this statute, and changing the procedural requirements involved in the determination as to whether a permit should be suspended or revoked. The Director finds that the change of authority is consistent with Mississippi's redesignation of the responsibilities for administering and enforcing the Mississippi program and that the revised procedural requirements are no less stringent than those of section 521(a)(4) of SMCRA.

Section 49–17–29, which is referenced in the revised provisions of section 53–9–69(1)(d), is a statutory provision codified in the Mississippi Code of 1972 that provides general administrative practices and procedures regarding hearings and appeals of decisions of the permit board. Section 49–17–29(4) provides for an informal public hearing or meeting to obtain comments from the public on the proposed action and a formal hearing if requested within 30 days after the permit board takes action upon a permit revocation request. If a formal hearing is held, section 49–17–29(5) provides for an appeal from any decision or action of the permit board in a chancery court of the county where the surface coal mining and reclamation operation is located. The Director finds that Mississippi's revised provisions for public notice, hearing, and appeal are no less stringent than the requirement for notice and hearing at section 521(a)(4) of SMCRA.

d. Mississippi removed its existing provision at section 53–9–69(1)(e) which was a counterpart to section 521(a)(5) of SMCRA and added a new provision at section 53–9–69(1)(e) that allows the permittee or other interested party to request a formal hearing concerning an order of cessation or violation as provided under section 49–17–41. Section 49–17–41 is a statutory provision codified in the Mississippi Code of 1972 that provides general administrative practices and procedures relating to hearing and appeal of decisions of the commission or executive director. Any person or interested party aggrieved by any order of the commission or the executive director shall have a right to file a petition under section 49–17–41 for review within 30 days after the order is issued. Section 49–17–41 also provides for appeal to the chancery court of the final order of determination of the commission following the formal hearing. The Director finds that Mississippi's new provision at section 53–9–69(e), which provides for formal hearing and appeal, is consistent with and no less effective than the requirements of the Federal regulations at 30 CFR 843.16 concerning formal review of citations.

Section 52(a)(5) of SMCRA provides specific requirements for notices of violation and cessation orders including content, service, and subsequent actions that may be taken. It also specifies that any notice or order which requires cessation of mining by the operator shall expire within 30 days of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of the public hearing. This public hearing may be informal in nature and is required unless the condition, practice, or violation in question has been abated or the hearing has been waived within the 30-day time frame. Although Mississippi removed its counterpart to section 521(a)(5) of SMCRA concerning specific requirements for orders of violation and cessation including content, service, and subsequent actions that may be taken, its currently approved regulations at sections 243.11, 243.12, 243.15 of the Mississippi Surface Coal Mining Regulations contain these substantive requirements. They provide specific requirements for orders and the required public hearing. Therefore, the Director finds that the removal of existing section 53–9–69(1)(e) will not render the Mississippi program less stringent than SMCRA.

e. At section 53–9–69(2), which provides the procedural requirements relating to initiating a civil action for relief, Mississippi removed all references to the ''administrator'' and added references to the ''commission,'' ''permit board,'' and/or ''executive

director.'' The Director finds that this revision is consistent with Mississippi's redesignation of the responsibilities for administering and enforcing the Mississippi program.

At section 53–9–69(2)(a), Mississippi added the First Judicial District of Hinds County to the list of chancery courts in which a civil action for relief could be initiated. The Mississippi program now allows a civil action for relief, including a permanent or temporary injunction or any other appropriate order, to be initiated in the chancery court of the county or judicial district in which the surface coal mining and reclamation operation is located, in which the permittee has its principal office, or in the First Judicial District of Hinds County. Section 521(c) of SMCRA provides that a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order may be initiated in the district court of the United States for the district in which the surface coal mining and reclamation operation is located or in which the permittee has his principal office. Section 521(d) of SMCRA provides that nothing in section 521 ''shall be construed so as to eliminate any additional enforcement rights or procedures which are available under State law to a State regulatory authority but which are not specifically enumerated herein.'' Therefore, the Director finds that Mississippi's proposed revision will not render the enforcement provisions of section 53–9–69(2)(a) less stringent than those of section 521(c) of SMCRA.

At section 53–9–69(2)(b), Mississippi added the following provision to the existing requirements concerning the court providing injunctive relief.

> The commission may obtain mandatory or prohibitory injunctive relief, either temporary or permanent, and in cases of imminent and substantial hazard or endangerment to the environment or public health, it is not necessary that the commission plead or prove: (i) That irreparable damage would result if the injunction did not issue; (ii) that there is no adequate remedy by law; or (iii) that a written complaint or commission order has first been issued for the alleged violation.

There is no counterpart provision in SMCRA or the Federal regulations. However, the proposed revision is not inconsistent with any Federal provisions and in accordance with section 521(d) of SMCRA, the Director finds that the addition of this new provision will not render the enforcement provisions of section 53–9–69(2)(b) less stringent than those of section 521(c) of SMCRA.

27. Section 53–9–71, Designation of Lands as Unsuitable for Surface Coal Mining Operations

Section 53–9–71 was amended to modify the procedures for petitioning to designate lands unsuitable for surface coal mining and reclamation and to revise the provisions for public hearings and formal hearings.

a. At section 53–9–71(1)(a), Mississippi added the provision that surface coal mining and reclamation permits may be issued before completion of the planning process that is to be established for designating lands as unsuitable for surface coal mining operations.

There is no Federal counterpart to this provision. However, on September 4, 1980, the Secretary of the Interior found pursuant to section 503(a)(5) of SMCRA that Mississippi had established a process for the designation of areas as unsuitable for surface coal mining in accordance with section 522 of SMCRA (45 FR 58520). Therefore, the Director finds that the addition of the proposed provision will not render the Mississippi program less stringent than section 522(a)(1) of SMCRA.

b. Mississippi revised section 53–9–71(1)(b) by changing the authority for designating an area as unsuitable for all or certain types of surface coal mining operations from the ''administrator'' to the ''commission.'' The Director finds that this change of authority is consistent with Mississippi's redesignation of the responsibilities for administering and enforcing the Mississippi program.

c. Mississippi revised section 53–9–71(1)(d) by changing the authority for the surface coal mining lands review from the ''administrator'' to the ''state geologist.'' The Director finds that this change of authority is consistent with Mississippi's redesignation of the responsibilities for administering and enforcing the Mississippi program.

d. At section 53–9–71(2)(a), Mississippi changed the time frame for holding a public hearing from ten months to six months after receipt of a petition. Section 522(c) of SMCRA requires that a public hearing be held within ten months after receipt of a petition. The Director finds that Mississippi's requirement for a six-month time frame is within the time requirements of SMCRA, and is approving this provision.

Mississippi also added a provision that allows any interested party aggrieved by a decision of the commission to request a formal hearing under section 49–17–41 and any person who participated as a party in the formal hearing to appeal the final decision under section 49–17–41. There is no counterpart provision in section 522 of SMCRA, but section 526(e) of SMCRA does require that actions of the State regulatory authority be subject to judicial review. Therefore, the Director finds that Mississippi's proposed provision at section 53–9–71(2)(a) is no less stringent than the requirements of section 522(c) concerning a public hearing and the requirements of section 526(e) of SMCRA concerning judicial review.

e. At section 53–9–71(2)(b), Mississippi added a new provision that requires the commission to promulgate regulations that are no less stringent than the Federal regulations concerning procedures for designating lands unsuitable for surface coal mining, including procedures for the content and submission of petitions and notice and public hearing requirements. Although there is no direct counterpart in section 522 of SMCRA, section 503(a)(7) of SMCRA requires a State program to have rules and regulations consistent with the Federal regulations. Therefore, the Director finds that the proposed provision is not inconsistent with the requirements of SMCRA, and is approving it.

28. Section 53–9–77, Formal Hearings

This section was amended to provide for administrative review and appeal of decisions of the permit board and commission and to provide for the powers of the permit board and the commission in conducting hearings. With the following exceptions, the Director finds that the revised provisions of section 53–9–77 in conjunction with the administrative and judicial review requirements at section 49–17–29 and 49–17–41 of the Mississippi Code of 1972 are no less stringent than the requirements of sections 525 and 526 of SMCRA.

a. Mississippi removed its counterpart to section 525(a)(2) of SMCRA at previously approved section 53–9–77(1)(b). Section 525(a)(2) requires that the permittee and other interested persons be given written notice of the time and place of an enforcement hearing at least five days prior to such hearing. Although Mississippi's statute at section 53–9–69(1)(e) provides for a hearing under section 49–17–41 of the Mississippi Code of 1972 for enforcement actions and section 49–17–41 requires the commission to fix the time and place of such hearing and to notify those who requested the hearing, neither of these sections contain a time frame for notification. However, in accordance with the required program

amendment at 30 CFR 924.16(a), Mississippi is in the process of revising its regulations to meet the requirements of SMCRA and the Federal regulations prior to allowing coal exploration or surface mining operations in the State. The Director will ensure that Mississippi amends its regulations to provide the permittee and other interested persons written notice of the time and place of an enforcement hearing at least five days prior to such hearing, or otherwise amend its program, to be no less stringent than section 525(a)(2) of SMCRA and no less effective than the requirements of 30 CFR 843.16 and 43 CFR Part 4 of the Federal regulations.

b. Mississippi removed its counterpart to section 525(b) of SMCRA at previously approved section 53–9–77(2). Section 525(b) of SMCRA requires that where an application for review concerns an order of cessation of surface coal mining and reclamation operations, findings of fact shall be made and a written decision shall be issued vacating, affirming, modifying, or terminating an order of cessation within 30 days of receipt of the application, unless temporary relief has been granted. A counterpart to this provision is not included under section 49–17–41, the section which is required to be followed for a formal hearing on cessation orders, or in Mississippi's currently approved regulations. However, in accordance with the required program amendment at 30 CFR 924.16(a), Mississippi is in the process of revising its regulations to meet the requirements of SMCRA and the Federal regulations prior to allowing coal exploration or surface mining operations in the State. The Director will ensure that Mississippi amends its regulations to require issuance of a written decision within 30 days of receipt of an application for review where it concerns an order for cessation of surface coal mining and reclamation operations, unless temporary relief has been granted, or otherwise amend its program, to be no less stringent than the requirements of section 525(b) of SMCRA and no less effective than the requirements of 30 CFR 843.16 and 43 CFR Part 4 of the Federal regulations.

c. Section 525(c) of SMCRA requires that in order for temporary relief to be granted, three conditions must be met: (1) a hearing, (2) a showing by the applicant that there is substantial likelihood that the findings of the Secretary will be favorable to him, and (3) a finding that such relief will not adversely affect the health or safety of the public or cause significant imminent environmental harm. These and other Federal requirements concerning temporary relief were included in section 53–9–77(3) before Mississippi revised its statute. Under Mississippi's proposed statutory scheme at section 53–9–77(4)(b), the hearing officer may grant temporary relief ''upon the basis of evidence presented at the hearing.'' The Director is approving this provision with the requirement that Mississippi amend the Mississippi Surface Coal Mining Regulations to include conditions for granting temporary relief that are no less stringent than those contained in section 525(c) of SMCRA and no less effective than those contained in 30 CFR 843.16 and 43 CFR Part 4 of the Federal regulations. In accordance with the required program amendment at 30 CFR 924.16(a), Mississippi is in the process of revising its regulations to meet the requirements of SMCRA and the Federal regulations prior to allowing coal exploration or surface mining operations in the State. The Director will ensure that Mississippi's amended regulations include the required conditions for granting temporary relief.

d. Mississippi removed its provision at section 53–9–77(4) which was a counterpart to section 525(d) of SMCRA, which provides hearing requirements concerning show cause orders and suspension or revocation of a permit. However, Mississippi does provide equivalent provisions for issuance of show cause orders and suspension or revocation of permits at section 53–9–69(d) of its statutes and at section 243.13(e) of its regulations. Therefore, the Director is approving the removal of section 53–9–77(4).

e. Section 525(e) of SMCRA provides that at the request of any person, costs and expenses, including attorney fees, resulting from administrative or judicial review may be assessed against either party. Mississippi removed its counterpart provision at section 53–9–77(6). Therefore, the Director is requiring Mississippi to amend section 53–9–77 to include requirements for court costs and attorney fees that are no less stringent than section 525(e) of SMCRA.

f. Mississippi's requirements for judicial review at section 53–9–77 do not include a counterpart to the provision in section 526(e) of SMCRA that requires the availability of judicial review shall not be construed to limit the operation of the rights for civil action established in section 520 of SMCRA. Currently approved section 53–9–79, which included this requirement, was repealed. Therefore, the Director is requiring Mississippi to amend its provisions concerning judicial review at section 53–9–77 by adding a proviso that the availability of judicial review shall not be construed to limit the operation of the rights established for civil actions in section 53–9–67 except as provided therein.

29. Section 53–9–81, Exceptions

The existing provision at section 53–9–81(c) which excluded the extraction of coal incidental to the extraction of other materials where coal does not exceed 16⅔ percent of the tonnage of materials removed for purposes of commercial use or sale from the requirements of the Mississippi Surface Coal Mining and Reclamation Law was removed. OSM interprets the deletion of this provision to mean that Mississippi intends to regulate this type of coal extraction. Although section 701(28)(A) of SMCRA excludes this type of coal extraction from the requirements of SMCRA, section 505 of SMCRA provides that any provision of any State law or regulation which provides for more stringent land use and environmental controls and regulations of surface coal mining and reclamation operations than do the provisions of SMCRA or the Federal regulations shall not be construed to be inconsistent with SMCRA. Therefore, the Director finds that the removal of section 53–9–81(c) will not render the Mississippi program less stringent than SMCRA.

30. Section 53–9–89, Deposit of Funds

Section 53–9–89 was amended to create the ''Surface Coal Mining and Reclamation Fund,'' which includes the ''Surface Coal Mining Program Operations Account'' and the ''Surface Coal Mining Reclamation Account''; to provide for use of the accounts; and to require certain funds to be deposited into the fund. Monies in the ''Surface Coal Mining Program Operations Account'' are to be used to pay the reasonable direct and indirect costs of administering and enforcing the Mississippi program. Monies in the ''Surface Coal Mining Reclamation Account'' are to be used to pay for the reclamation of lands for which bonds or other collateral were forfeited. The ''Surface Coal Mining Program Operations Account'' may receive monies from any available public or private source, with the exception of fines, penalties and the proceeds from the forfeiture of bonds or other collateral. The ''Surface Coal Mining Reclamation Account'' may receive monies from fines, penalties, the proceeds from the forfeiture of bonds or other collateral and interest.

Section 503(a)(3) of SMCRA requires that a State regulatory authority have

sufficient funding to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA. The Director finds that creation of the ''Surface Coal Mining and Reclamation Fund'' will help Mississippi to maintain the funding necessary to administer and enforce its program, and is approving the provisions of section 53–9–89.

IV. Summary and Disposition of Comments

Public Comments

OSM solicited public comments on the proposed amendment, but none were received.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Mississippi program. On August 14, 1997 (Administrative Record No. MS–0341), the Fish and Wildlife Service (FWS) responded with comments, questions, and concerns regarding the proposed amendment.

(1) The FWS supported Mississippi's assumption of authority to regulate surface coal mining provided there is adequate protection of wetlands and fish and wildlife resources, and recommended that the Office of Surface Mining retain oversight authority.

Mississippi's statute at section 53–9–45(2)(u) requires all surface coal mining and reclamation operations to assure the minimization of disturbances and adverse impacts on fish, wildlife and related environmental values using the best technology currently available. This is consistent with the requirements of section 515(b)(24) of SMCRA concerning environmental protection performance standards for fish, wildlife and related environmental values. The Office of Surface Mining, in accordance with section 201 of SMCRA, retains the authority to administer the programs for controlling surface coal mining and reclamation operations pursuant to the requirements of SMCRA and to conduct oversight activities, including investigations and inspections necessary in ensure compliance with SMCRA.

(2) The FWS requested that the role of the state commission and permit board be clarified and asked how coordination with other State agencies would be handled.

As discussed in finding No. C.2, the Mississippi Legislature at section 53–9–9 of the Mississippi Surface Coal Mining and Reclamation Law, designated the Commission on Environmental Quality (commission) as the body to enforce the Mississippi program, including the issuance of enforcement and penalty orders, promulgation of regulations, and designation of lands unsuitable for surface coal mining. The Mississippi Environmental Quality Permit Board (permit board) was designated as the body to issue, modify, revoke, transfer, suspend, and reissue permits and to require, modify or release performance bonds. As discussed below, representatives from other State agencies are members of the permit board. Therefore, coordination would be assured in the review and decision processes for all permitting actions.

The commission was created by the Mississippi Legislature at section 49–2–5 of the Mississippi Code of 1972. It is composed of seven persons appointed by the Governor, with the advice and consent of the Senate, for a term of seven years. One person is appointed from each congressional district as constituted January 1, 1978, and two members are appointed from the State at large. The commission is composed of persons with extensive knowledge of or practical experience in at least one of the matters of jurisdiction of the commission. The permit board was created by the Mississippi Legislature at section 49–17–28 of the Mississippi Code of 1972. The membership of the permit board is composed, by law, of the chief of the Bureau of Environmental Health of the State Board of Health, or his designee; the Executive Director of the Department of Wildlife, Fisheries and Parks, or his designee; the Director of the Bureau of Land and Water Resources of the Department of Environmental Quality, or his designee; the Supervisor of the State Oil and Gas Board, or his designee; the Executive Director of the Department of Marine Resources, or his designee; the Director of the Bureau of Geology and Energy Resources of the Department of Environmental Quality, or his designee; the Commissioner of Agriculture and Commerce, or his designee; a retired professional engineer knowledgeable in the engineering of water wells and water supply systems, to be appointed by the Governor; and a retired water well contractor, to be appointed by the Governor.

(3) The FWS asked whether state or federal agencies may appeal decisions of the commission and permit board.

Mississippi allows any person claiming an interest relating to the surface coal mining operation who is so situated that the person may be affected by that operation to submit objections and request a public hearing or formal hearing under section 49–17–29 of the Mississippi Code of 1972 concerning decisions of the permit board and to submit objections and request a formal hearing under section 49–17–41 of the Mississippi Code of 1972 concerning decisions of the commission. Both sections 49–17–29 and 49–17–41 provide for judicial appeal of final orders. Mississiippi's statute at section 53–9–7(r) defines the term ''person'' to include any agency, unit or instrumentality of federal, state or local government.

(4) With reference to section 53–9–45(4), the FWS commented that exemptions or variances should not be granted that result in substantial land use changes, especially if such land use changes result in significant adverse impacts to fish and wildlife resources and expressed concerns regarding the permit board having the authority to change postmining land use to a substantially different land use compared with premining land use.

Mississippi's provision at section 53–9–45(4) is consistent with the requirements of section 515(e) of SMCRA, which provides authority to States to approve land use changes under specified circumstances.

(5) With reference to section 53–9–71(4)(b), the FWS commented that mining on State lands should not be permitted since such actions could result in significant adverse impacts to fish and wildlife resources.

Mississippi's provision at section 53–9–71(4)(b) was previously approved by the Secretary of the Interior, and no substantive revisions were proposed in this amendment. In acting on State program amendments, the Director only addresses those sections of a State's law and regulations where substantive revisions are proposed. Section 522(e) of SMCRA does not specifically prohibit mining on State lands. In accordance with Section 503 of SMCRA, States may, subject to approval of the Secretary of the Interior, assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations on non-Federal lands. This would include State lands.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Mississippi proposed to make in this amendment pertain to air or water quality standards.

Therefore, OSM did not request the EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from The EPA (Administrative Record No. MS–0340). The EPA did not respond to OSM's request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. MS–0340). Neither the SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and additional requirements, the proposed amendment as submitted by Mississippi on May 6, 1997.

The Director does not approve, as discussed in finding No. C.22.c.(2), the provision in section 53–9–55(3) that allows the commission to promulgate regulations concerning a waiver from the requirement to post a penalty payment bond in order to contest the proposed penalty or the fact of the violation.

With the requirement that Mississippi further revise its statutes, the Director approves, as discussed in finding No. C.6.a, section 53–9–26, concerning Mississippi's small operator assistance program; finding No. C.20, section 53–9–45(4)(b), concerning variances from approximate original contour; finding No. C.26.b, section 53–9–69(1)(c)(i), concerning issuance of an enforcement order; finding No. C.28.e. and f, section 53–9–77, concerning administrative and judicial review.

With the requirement that Mississippi further revise its regulations, the Director approves, as discussed in finding No. C.6.b, section 53–9–26, concerning Mississippi's small operator assistance program; finding No. C.17, section 53–9–37(4), concerning time frames for permit decision; finding No. C.28.a., b., and c., section 53–9–77, concerning administrative and judicial review.

The Federal regulations at 30 CFR Part 924, codifying decisions concerning the Mississippi program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Mississippi program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Mississippi of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 924

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 22, 1997.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 924 is amended as set forth below:

PART 924—MISSISSIPPI

1. The authority citation for part 924 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 924.15 is added to read as follows:

§ 924.15 Approval of Mississippi regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these

amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register.**

Original amendment submission date	Date of final publication	Citation/description
May 6, 1997	January 9, 1998	MSCMRL 53–9–3; 5; 7; 9; 11; 13; 15; 17; 19; 21; 23; 25; 26; 27; 28; 29; 31; 32; 33; 35; 37; 39; 41; 43; 45; 47; 49; 51; 53; 55; 57; 59; 61; 63; 65; 67; 69; 71; 73; 75; 77; 79; 81; 83; 85; 87; 89; 91.

3. Section 924.16 is revised to read as follows:

§ 924.16 Required program amendments.

Pursuant to 30 CFR 732.17(f)(1), Mississippi is required to submit to OSM by the specified date the following written, proposed program amendments, or a description of the amendments to be proposed, that meet the requirements of SMCRA and 30 CFR chapter VII and a timetable for enactment that is consistent with Mississippi's established administrative or legislative procedures.

(a) Mississippi prior to allowing coal exploration or surface mining operations shall submit and have approved by OSM amendments to the Mississippi Surface Coal Mining Regulations that are no less effective than the Federal regulations at 30 CFR chapter VII in existence at the time.

(b) By March 10, 1998. Mississippi shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to the Mississippi Surface Coal Mining and Reclamation Law to correct the following typographical errors that would have a substantive impact on implementation of the Mississippi program:

(1) At section 53–9–26 change the word ''operation'' in the phrase ''at all locations of a surface coal mining operation'' to ''operator.''

(2) At section 53–9–45(4)(b) remove the reference to subsection (2) in the phrase ''a variance from the requirement to restore to approximate original contour set forth in subsection (2) or (3) of this section.''

(c) By March 10, 1998. Mississippi shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to section 53–9–69(1)(c)(i) of the Mississippi Surface Coal Mining and Reclamation Law to change the word ''may'' to ''shall'' in the phrase ''the commission, executive director or the executive director's authorized representative may issue an order to the permittee or agent of the permittee.''

(d) By March 10, 1998.

(1) Mississippi shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to section 53–9–77 of the Mississippi Surface Coal Mining and Reclamation Law to provide requirements for assessing court costs and attorney fees that are no less stringent than those provided in section 525(e) of SMCRA.

(2) Mississippi shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to section 53–9–77 of the Mississippi Surface Coal Mining and Reclamation Law, consistent with section 526(e) of SMCRA, to provide that the availability of judicial review shall not be construed to limit the operation of the rights established for civil actions in section 53–9–67 except as provided therein.

(e) By March 10, 1998. Mississippi shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to section 186.23(b)(2) of the Mississippi Surface Coal Mining Regulations, or otherwise amend its program, to require agreement to an extension of the 60-day time frame for acting upon a complete permit application by the applicant and interested parties who requested the public hearing, if a public hearing is requested and held.

4. Section 924.17 is added to read as follows:

§ 924.17 State regulatory program provisions and amendments disapproved.

The proposed language in section 53–9–55(3), as submitted by Mississippi on May 6, 1997, that allows the commission to promulgate regulations regarding a waiver from the requirement to post a penalty payment bond upon a showing by the operator of an inability to post the bond is disapproved.

[FR Doc. 98–532 Filed 1–8–98; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[FRL–5945–8]

RIN 2060-AH61

Minor Amendments to Inspection Maintenance Program Evaluation Requirements; Amendment to the Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today's action revises the Motor Vehicle Inspection/Maintenance (I/M) requirements by replacing the I/M rule requirement that the tailpipe portion of the mandatory program evaluation be performed using only an IM240 or equivalent mass-emission transient test with a requirement that states use a sound evaluation methodology capable of providing accurate information about the overall effectiveness of an I/M program. The goal of this action is to allow states additional flexibility to use not only IM240 but other approved alternative methodologies for their program evaluation. Today's action also clarifies that such program evaluation testing shall begin no later than November 30, 1998, and is not required to be coincident with program start up (though the first report is still due two years after program start up). This action also clarifies that ''initial test'' simply means that the test is conducted before repairs for each test cycle, and does not therefore preclude states from using alternative sampling methodologies such as roadside pullover to sample the fleet. Today's action also amends the conditions relating to the program evaluation testing requirements that were part of the conditional interim approval actions taken on the I/M State Implementation Plans (SIPs) for the Commonwealths of Pennsylvania and Virginia and the State of Delaware. States wishing to take advantage of the flexibility provided by today's action should review their implementation plans for any language that conflicts